SENATE—*Monday, March 21, 1994*

(Legislative day of Tuesday, February 22, 1994)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable PATTY MURRAY, a Senator from the State of Washington.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

For my people have committed two evils; they have forsaken me the fountain of living waters, and hewed them out cisterns, broken cisterns, that can hold no water.—Jeremiah 2:13.

God our Father, this sad, provocative word from the prophet Jeremiah reminds us of the tragic consequences when people abandon faith in God. Having forsaken the foundation of living waters, life becomes futile as we dig for cisterns which can hold no water. Somehow help us comprehend the infinite tragedy that Godlessness brings.

We are reminded of the words of Thomas Jefferson: "God who gave us life gave us liberty." And the profound question that followed, "Can the liberties of a nation be secure when we have removed from the hearts of the people the belief that those liberties are the gift of God?"

God of truth, justice, and love, awaken us to the fact that when we abandon the absolute, everything becomes relative. Liberty is anarchy, and life is emptied of meaning. Help us, gracious God, to find our way back to the God of our fathers.

In the name of the Lord of Heaven and Earth. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 21, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PATTY MURRAY, a Senator from the State of Washington, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. MURRAY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1994

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 208, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 208) to reform the concession policies of the National Park Service, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Park Service Concessions Policy Reform Act of 1994".

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2-4), which directs the Secretary of the Interior to administer areas of the National Park System in accordance with the fundamental purpose of preserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as the Secretary determines are necessary and appropriate in accordance with this Act—

(1) should be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair these values; and

(2) should be limited to locations and designs consistent to the highest practicable degree with the preservation and conservation of park resources and values.

(b) POLICY.—It is the policy of the Congress that—

(1) development within a park shall be limited to those facilities and services that the Secretary determines are necessary and appropriate for public use and enjoyment of the park in which such facilities and services are located;

(2) development within a park should be consistent to the highest practicable degree with the preservation and conservation of the park's resources and values;

(3) such facilities and services should be provided by private persons, corporations, or other entities, except when no private interest is qualified and willing to provide such facilities and services;

(4) if the Secretary determines that development should be provided within a park, such development shall be designed, located, and operated in a manner that is consistent with the purposes for which such park was established;

(5) such facilities and services should be awarded to the person, corporation, or entity submitting the best proposal through a competitive selection process; and

(6) such facilities or services should be provided to the public at reasonable rates.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "concessioner" means a person, corporation, or other entity to whom a concessions contract has been awarded;

(2) "concessions contract" means a contract, including permits, to provide facilities or services, or both, at a park;

(3) "facilities" means improvements to real property within parks used to provide accommodations, facilities, or services to park visitors;

(4) "park" means a unit of the National Park System;

(5) "proposal" means the complete proposal for a concessions contract offered by a potential or existing concessioner in response to the minimum requirements for the contract established by the Secretary; and

(6) "Secretary" means the Secretary of the Interior.

SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.

The Act of October 9, 1965, Public Law 89-249 (79 Stat. 969, 16 U.S.C. 20-20g), entitled "An Act relating to the establishment of concession policies administered in the areas administered by the National Park Service and for other purposes", is hereby repealed. The repeal of such Act shall not affect the validity of any contract entered into under such Act, but the provisions of this Act shall apply to any such contract except to the extent such provisions are inconsistent with the express terms and conditions of the contract.

SEC. 5. CONCESSIONS POLICY.

Subject to the findings and policy stated in section 2 of this Act, and upon a determination by the Secretary that facilities or services are necessary and appropriate for the accommodation of visitors at a park, the Secretary shall, consistent with the provisions of this Act, laws relating generally to the administration and management of units of the National Park System, and the park's general management plan, concessions plan, or other applicable plans, authorize private persons, corporations, or other entities to provide and operate such facilities or services as the Secretary deems necessary and appropriate.

SEC. 6. COMPETITIVE SELECTION PROCESS.

(a) IN GENERAL.—(1) Except as provided in subsection (b), and consistent with the provisions of subsection (g), any concessions contract entered into pursuant to this Act shall be awarded to the person submitting the best proposal as determined by the Secretary, through a competitive selection process.

(2) Within 180 days after the date of enactment of this Act, the Secretary shall pro-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

mulgate appropriate regulations establishing such process. The regulations shall include provisions for establishing a method or procedure for the resolution of disputes between the Secretary and a concessioner in those instances where the Secretary has been unable to meet conditions or requirements or provide such services, if any, as set forth in a prospectus pursuant to sections 6(c)(2) (D) and (E).

(b) TEMPORARY CONTRACT.—Notwithstanding the provisions of subsection (a), the Secretary may award a temporary concessions contract in order to avoid interruption of services to the public at a park.

(c) PROSPECTUS.—(1) Prior to soliciting proposals for a concessions contract at a park, the Secretary shall publish a notice of availability for a prospectus soliciting proposals at least once in local or national newspapers or trade publications, as appropriate, and shall make such prospectus available upon request to all interested parties.

(2) The prospectus shall include, but need not be limited to, the following information:

(A) The minimum requirements for such contract, as set forth in subsection (d).

(B) The terms and conditions of the existing concessions contract awarded for such park, if any, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services which may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, if any, including but not limited to, public access, utilities, and buildings.

(E) Minimum public services to be offered within a park by the Secretary, including but not limited to, interpretive programs, campsites, and visitor centers.

(F) Such other information related to the proposed concessions operation which is not privileged or otherwise exempt from disclosure under Federal law as the Secretary determines is necessary to allow for the submission of competitive proposals.

(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include, but need not be limited to, the minimum acceptable franchise fee, the duration of the contract, facilities, services, or capital investment required to be provided by the concessioner, and measures needed to ensure the protection and preservation of park resources.

(2) The Secretary may reject any proposal, notwithstanding the amount of franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is likely to provide unsatisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(3) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(e) SELECTION OF BEST PROPOSAL.—(1) In selecting the best proposal, the Secretary shall consider the following principal factors:

(A) The responsiveness of the proposal to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(B) The experience and related background of the person, corporation, or entity submitting the proposal, including but not limited to, the past performance and expertise of such person, corporation, or entity in providing the same or similar facilities or services.

(C) The financial capability of the person, corporation, or entity submitting the proposal.

(D) The proposed franchise fee: *Provided*, That consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(2) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(f) CONGRESSIONAL NOTIFICATION.—(1) The Secretary shall submit any proposed concessions contract with anticipated annual gross receipts in excess of $5,000,000 (indexed to 1993 constant dollars) or a duration of ten or more years to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives.

(2) The Secretary shall not ratify any such proposed contract until at least 60 days subsequent to the notification of both Committees.

(g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1) Except as provided in paragraph (2), the Secretary shall not grant a preferential right to a concessioner to renew a concessions contract executed pursuant to this Act.

(2)(A) Notwithstanding the provisions of paragraph (1), the Secretary shall grant a preferential right of renewal to a concessioner—

(i) for a concessions contract which—

(I) primarily authorizes a concessioner to provide outfitting, guide, river running, or other similar services within a park; and

(II) does not grant the concessioner any interest in any structure, fixture, or improvement pursuant to section 11 of this Act; or

(III) the Secretary estimates will have annual gross revenues of no more than $500,000; and

(ii) where the Secretary determines that the concessioner has operated satisfactorily during the term of the previous contract; and

(iii) where the Secretary determines that the concessioner submits a responsive proposal for the new contract which satisfies the minimum requirements established by the Secretary.

(B) For the purposes of paragraph (2), the term "preferential right of renewal" means that the Secretary shall allow a concessioner satisfying the requirements of subparagraph (A) the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best offer.

(h) NO PREFERENTIAL RIGHT TO ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services at a park.

SEC. 7. FRANCHISE FEES.

(a) IN GENERAL.—Franchise fees, however, stated, shall not be less than the minimum fee established by the Secretary for each contract. The minimum fee shall be determined in a manner that will provide the concessioner with a reasonable opportunity to realize a profit on the operation as a whole, commensurate with the capital invested and the obligations assumed.

(b) MULTIPLE CONTRACTS WITHIN A PARK.—If multiple concessions contracts are awarded to authorize concessioners to provide the same or similar outfitting, guide, river running, or other similar services at the same approximate location or resource within a specific park, the Secretary shall establish an identical franchise fee for all such contracts. Such fee shall reflect fair market value, as determined by the Secretary.

SEC. 8. USE OF FRANCHISE FEES.

(a) SPECIAL ACCOUNT.—Except as provided in subsection (b), all receipts collected pursuant to this Act shall be covered into a special account established in the Treasury of the United States. Amounts covered into such account in a fiscal year shall be available for expenditure, subject to appropriation, solely as follows:

(1) 50 percent shall be allocated among the units of the National Park System in the same proportion as franchise fees collected from a specific unit bears to the total amount covered into the account for each fiscal year, to be used for resource management and protection, maintenance activities, interpretation, and research.

(2) 50 percent shall be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research.

(b) PARK IMPROVEMENT FUND.—(1) In lieu of collecting all or a portion of the franchise fees that would otherwise be collected pursuant to the concessions contract, the Secretary shall, where the Secretary determines it to be practicable, require a concessioner to establish a Park Improvement Fund (hereinafter in this section referred to as the "fund"), in which the concessioner shall deposit the franchise fees that would otherwise be required by the contract.

(2) The fund shall be maintained by the concessioner in an interest bearing account in a Federally-insured financial institution. The concessioner shall maintain the fund separately from any other funds or accounts and shall not co-mingle the monies in the fund with any other monies. The Secretary may establish such other terms, conditions, or requirements as the Secretary determines to be necessary to ensure the financial integrity of such fund.

(3) Monies from the fund, including interest, shall be expended by the concessioner solely as directed by the Secretary for activities and projects within the park which are consistent with the park's general management plan, concessions plan, and other applicable plans, and which the Secretary determines will enhance public use, safety, and enjoyment of the park, including but not limited to projects which directly or indirectly support concession facilities or services required by the concessions contract. Projects paid for from the fund shall not include routine, operational maintenance of facilities. A concessioner shall not be allowed to make any advances or credits to the fund.

(4) A concessioner shall not be granted any interest in improvements made from fund expenditures, including any interest granted pursuant to section 11 of this Act.

(5) Nothing in this subsection shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

(6) The concessioner shall maintain proper records for all expenditures made from the

fund. Such records shall include, but not be limited to invoices, bank statements, canceled checks, and such other information as the Secretary determines to be necessary.

(7) The concessioner shall annually submit to the Secretary a statement reflecting total activity in the fund for the preceding financial year. The statement shall reflect monthly deposits, expenditures by project, interest earned, and such other information as the Secretary requires.

(8) Upon the termination of a concessions contract, or upon the sale or transfer of such contract, any remaining balance in the fund shall be transferred by the concessioner to the successor concessioner, to be used solely as set forth in this subsection. In the event there is not a successor concessioner, the fund balance shall be deposited into the special account established in subsection (a).

SEC. 9. DURATION OF CONTRACT.

(a) MAXIMUM TERM.—A concessions contract entered into pursuant to this Act shall be awarded for a term not to exceed ten years: *Provided, however*, That the Secretary may award a contract for a term not to exceed twenty years if the Secretary determines that the contract terms and conditions necessitate a longer term.

(b) TEMPORARY CONTRACT.—A temporary concessions contract awarded on a non-competitive basis pursuant to section 6(b) of this Act shall be for a term not to exceed two years.

SEC. 10. TRANSFER OF CONTRACT.

(a) IN GENERAL.—(1) No concessions contract may be transferred, assigned, sold, or otherwise conveyed by a concessioner without prior written notification to, and approval of the Secretary.

(2) The Secretary shall not approve the transfer of a concessions contract to any individual, corporation or other entity if the Secretary determines that—

(A) such individual, corporation or entity is, or is likely to be, unable to completely satisfy all of the requirements, terms, and conditions of the contract; or

(B) such transfer, assignment, sale or conveyance is not consistent with the objectives of protecting and preserving park resources, and of providing necessary and appropriate facilities or services to the public at reasonable rates: *Provided*, That such approval shall not be unreasonably withheld.

(b) CONGRESSIONAL NOTIFICATION.—Within thirty days after receiving a proposal to transfer, assign, sell, or otherwise convey a concessions contract, the Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives of such proposal. Approval of such proposal, if granted by the Secretary, shall not take effect until sixty days after the date of notification of both Committees.

SEC. 11. PROTECTION OF CONCESSIONER INVESTMENT.

(a) EXISTING STRUCTURES.—(1) A concessioner who before the date of the enactment of this Act has acquired or constructed, or is required under an existing concessions contract to commence acquisition or construction of any structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concessions contract, shall have a possessory interest therein, to the extent provided by such contract.

(2) The provisions of this subsection shall not apply to a concessioner whose contract in effect on the date of enactment of this Act does not include recognition of a possessory interest.

(3) With respect to a concessions contract entered into on or after the date of enactment of this Act, the provisions of subsection (b) shall apply to any existing structure, fixture, or improvement as defined in paragraph (a)(1), except that the actual original cost of such structure, fixture, or improvement shall be deemed to be the value of the possessory interest as of the termination date of the previous concessions contract.

(b) NEW STRUCTURES.—(1) On or after the date of enactment of this Act, a concessioner who constructs or acquires a new, additional, or replacement structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concessions contract, shall have an interest in such structure, fixture, or improvement equivalent to the actual original cost of acquiring or constructing such structure, fixture, or improvement, less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles: *Provided*, That in no event shall the estimated useful life of such asset exceed the depreciation period used for such asset for Federal income tax purposes.

(2) In the event that the contract expires or is terminated prior to the recovery of such costs, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the value of the concessioner's interest in such structure, fixture, or improvement. A successor concessioner may not revalue the interest in such structure, fixture, or improvement, the method of depreciation, or the estimated useful life of the asset.

(3) Title to any such structure, fixture, or improvement shall be vested in the United States.

(c) INSURANCE, MAINTENANCE AND REPAIR.—Nothing in this section shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

SEC. 12. RATES AND CHARGES TO PUBLIC.

The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the bid specifications and contract, be judged primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variance, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

SEC. 13. CONCESSIONER PERFORMANCE EVALUATION.

(a) REGULATIONS.—Within one hundred and eighty days after the date of enactment of this Act, the Secretary shall publish, after an appropriate period for public comment, regulations establishing standards and criteria for evaluating the performance of concessions operating within parks.

(b) PERIODIC EVALUATION.—(1) The Secretary shall periodically conduct an evaluation of each concessioner operating under a concessions contract pursuant to this Act, as appropriate, to determine whether such concessioner has performed satisfactorily. In evaluating a concessioner's performance, the Secretary shall seek and consider applicable reports and comments from appropriate Federal, State, and local regulatory agencies. If the Secretary's performance evaluation results in an unsatisfactory rating of the concessioner's overall operation, the Secretary shall provide the concessioner with a list of the minimum requirements necessary for the operation to be rated satisfactory, and shall so notify the concessioner in writing.

(2) The Secretary may terminate a concessions contract if the concessioner fails to meet the minimum operational requirements identified by the Secretary within the time limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner.

(3) If the Secretary terminates a concessions contract pursuant to this section, the Secretary shall solicit proposals for a new contract consistent with the provisions of this Act.

(c) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives of each unsatisfactory rating and of each concessions contract terminated pursuant to this section.

SEC. 14. RECORDKEEPING REQUIREMENTS.

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

SEC. 15. EXEMPTION FROM CERTAIN LEASE REQUIREMENTS.

The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this Act.

SEC. 16. NO EFFECT ON ANILCA PROVISIONS.

Nothing in this Act shall be construed to amend, supersede, or otherwise affect any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1993

Mr. JOHNSTON. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 348, S. 1636, the Marine Mammal Protection Act Amendments of 1993.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1636) to authorize appropriations for the Marine Mammal Protection Act of 1972 and to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee

on Commerce, Science, and Transportation with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1636

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Protection Act Amendments of 1993".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) authorize appropriations to carry out the Marine Mammal Protection Act of 1972 for the fiscal years 1994 through 1998;

(2) ensure that the incidental take of marine mammals in any fishery, by itself and in combination with other human activities, does not cause any species or stock of marine mammals to be reduced to or maintained at, for significant periods of time, a level that is below the lower limit of its optimum sustainable population range;

(3) avoid restrictions on fishing operations when such restrictions are not necessary to meet the purpose described in paragraph (2);

(4) prohibit international lethal taking during commercial fishing, except as authorized through a waiver under section 101(a)(3) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3));

(5) focus efforts on identifying and addressing the most significant problems involving fishery-marine mammal interactions, considering both the status of the affected marine mammal stocks and the numbers of marine mammals that are taken incidentally in each fishery;

(6) streamline the procedure for authorizing the incidental taking of marine mammals in commercial fisheries, consistent with the long-term objective of identifying and taking such steps as may be practicable to reduce mortality and serious injury incidental to commercial fishing operations to insignificant [levels] *rates* approaching zero; and

(7) develop a cost-effective program for reliably monitoring (A) the levels of incidental take of marine mammals in commercial fisheries and (B) the size and current population trends of the affected marine mammals stocks.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMERCE DEPARTMENT.—Section 7(a) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(a)), is amended to read as follows:

"(a) DEPARTMENT OF COMMERCE.—There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, $21,636,000 for fiscal year 1994, $22,502,000 for fiscal year 1995, $23,402,000 for fiscal year 1996, $24,338,000 for fiscal year 1997, and $25,311,000 for fiscal year 1998.".

(b) INTERIOR DEPARTMENT.—Section 7(b) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(b)), is amended to read as follows:

"(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of Interior, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, and $9,900,000 for fiscal year 1998.".

(c) MARINE MAMMAL COMMISSION.—Section 7(c) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1407), is amended to read as follows:

"(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $1,350,000 for fiscal year 1994, $1,400,000 for fiscal year 1995, $1,450,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, and $1,550,000 for fiscal year 1998.".

SEC. 4. INCIDENTAL TAKING OF ENDANGERED AND THREATENED SPECIES.

(a) IN GENERAL.—Section 101(a)(4) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(4)) is amended to read as follows:

"(4)(A) The Secretary may allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of marine mammals from a species or stock designated under [the] *this* Act as depleted because of its listing as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that such taking is pursuant to a statement issued by the Secretary for such taking under section 7 of such Act (16 U.S.C. 1536).

"(B) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.".

(b) CONFORMING AMENDMENT.—Section 7(b)(4)(C) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)(C)) is amended by inserting "101(a)(4) or" immediately before "101 (a)(5)" each place it appears.

SEC. 5. CONSERVATION PLANS.

Section 115(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. [13836(b))] *1383b(b))* is amended by adding at the end the following new paragraph:

"(4) If the Secretary determines that an incidental taking plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock identified as a critical stock under section [118(c)], *117(c)*, any conservation plan required under this subsection for such stock shall only address non-incidental takings.".

SEC. 6. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amended by adding at the end the following new section:

"SEC. [118.] *117.* TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

"(a) IN GENERAL.—(1) Except as provided in section 114 and in paragraphs (2), (3), and (4) of this section, and notwithstanding section 101, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). The Secretary shall develop and implement incidental taking plans under this section to reduce the incidental lethal taking of marine mammals, from stocks listed as critical stocks under subsection (c), to a level below the calculated acceptable removal level.

"(2) Section 101(a)(4), and not this section, shall govern the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened or endangered species under the Endangered Species Act of 1973.

"(3) Sections 104(h) and 306, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

"(4) This section shall not govern the taking of marine mammals from an experimental population of California sea otters to which the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500) applies.

"(5) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

"(b) SCIENTIFIC CONSULTATION.—In implementing the incidental taking program under this section, the Secretary shall seek the advice of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, and commercial fishing technology and practices. Such advice should be sought with respect to information available, and actions proposed, for such implementation, including—

"(1) information provided in connection with stock assessments under this section;

"(2) studies needed to resolve uncertainties regarding stock separation, stock abundance, or trends and factors affecting distribution, size, or productivity of stocks;

"(3) studies needed to resolve uncertainties in determining marine mammal species, numbers, ages, and gender, and the reproductive status of stocks; and

"(4) research to identify modifications in fishing gear and fishing practices likely to reduce the mortality and serious injury of marine mammals incidental to commercial fishing operations.

"(c) STOCK ASSESSMENTS.—(1) Using the best scientific information available and in accordance with this subsection, the Secretary shall prepare and issue, and thereafter (as appropriate) revise, a stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. The stock assessment shall include—

"(A) a definition of the stock by species [of] *or* subspecies and its spatial and temporal distribution;

"(B) the best available estimates of the stock's population abundance, realistic minimum population size, and current population trend;

"(C) estimates of the total lethal take from the stock by source and, for a stock designated under this subsection as a critical stock, other factors that may impede recovery of the stock, including impacts on marine mammal habitat and prey; and

"(D) a description of any commercial fishery that interacts with the stock, including—

"(i) the approximate number of vessels participating in the fishery;

"(ii) the approximate incidental lethal and serious injury take from the stock by such fishery;

"(iii) seasonal or area differences in levels of such incidental lethal or serious injury take; and

"(iv) the rate of incidental mortality in the stock caused by such fishing, based on a unit of fishing effort;

"(E) a determination as to the status of the stock, including whether the stock is determined to be within its optimum sustainable population range, is designated as depleted under this Act, is listed as threatened or endangered under the Endangered Species Act of 1973, or is proposed for listing as a critical stock under subparagraph (G);

"(F) a determination of the calculated acceptable removal level for the stock and the factors used to calculate it, including a recovery factor if the stock is below its optimum sustainable population; and

"(G) designation of the stock (based on a scientific analysis of the stock's population trend and population size, the level of total lethal take from the stock from all sources, and the best available estimates of net productivity at the maximum net productivity level) for listing in one of the following categories:

"(i) Class 1, consisting of stocks whose population size is declining, or whose population trend is unknown and whose realistic minimum population is less than 10,000, and from which the total annual lethal take exceeds the net productivity of the population when it is at its maximum net productivity level.

"(ii) Class 2, consisting of stocks—

"(I) whose population size is declining, or whose population trend is unknown and whose realistic minimum population is less than 10,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

"(II) whose population size is stable, or whose population trend is unknown and [the] *whose* realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take exceeds the net productivity of the stock's population when it is at its maximum net productivity level.

"(iii) Class 3, consisting of stocks—

"(I) whose population size is declining, or whose population trend is unknown and whose realistic minimum population is less than 10,000; and from which the total annual lethal take is less than 20 percent of the net productivity of the stock's population when it is at its maximum net productivity level;

"(II) whose population size is stable, or whose population trend is unknown and whose realistic minimum population is greater than 10,000 but less than 100,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level; or

"(III) whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take exceeds the net productivity of the stock's population when it is at its maximum net productivity level.

"(iv) Class 4, consisting of stocks—

"(I) whose population size is stable, or whose population trend is unknown and [the] *whose* realistic minimum population is greater than *10,000 but less than* 100,000; and from which the total annual lethal take is [between] *less than* 20 percent [and 100 percent] of the net productivity of the stock's population when it is at its maximum net productivity level; or

"(II) whose population size is increasing, or whose population trend is unknown and whose realistic minimum population is greater than 100,000; and from which the total annual lethal take is between 20 percent and 100 percent of the net productivity of the stock's population when it is at its maximum net productivity level.

"(v) Class 5, consisting of stocks whose population size is increasing, or whose population trend is unknown and [the] *whose* realistic minimum population is greater than 100,000; and from which the total annual lethal take is less than 20 percent of the net productivity of the stock's population when it is at its maximum net productivity level.

"(2) Not later than 240 days after the date of enactment of this section, the Secretary shall issue a draft of each stock assessment required by this subsection, after seeking advice from the experts described in subsection (b). The Secretary shall publish in the Federal Register a notice of availability of the draft and provide an opportunity for public review and comment during a period of not to exceed 60 days.

"(3) Not later than 90 days after the close of the public comment period on such preliminary stock assessment, the Secretary shall publish in the Federal Register a final stock assessment, after consideration of advice, recommendations, and comments of experts and the general public and the best scientific information available.

"(4) The Secretary shall review stock assessments in accordance with this subsection, and obtain advice and recommendations from experts—

"(A) on an annual basis for stocks listed as critical stocks or for which new information is available; and

"(B) at least once every 3 years for all other marine mammal stocks.

The Secretary shall revise such assessments after notice and opportunity for public comment, if the review indicates revision is necessary.

"(d) INCIDENTAL TAKING PLAN.—(1) The Secretary shall develop and implement an incidental taking plan designed to assist in the recovery of each marine mammal stock that is listed as a critical stock and interacts with commercial fisheries. Such plan shall be developed in consultation with the incidental take team established for the plan under this subsection. If there is insufficient funding available to develop and implement an incidental taking plan for all critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of *incidental taking plans for* Class 1 stocks. Within a particular class of critical stocks that interact with commercial fisheries, the Secretary shall give highest priority to the development and implementation of plans for stocks that the Secretary considers the most critical within the class.

"(2) Each incidental taking plan developed under this subsection for a critical stock shall include the following:

"(A) A review and evaluation of the information contained in the stock assessment published under subsection (c) and any new information that may be available.

"(B) An evaluation and estimate of the total number and percentage of animals from the stock that are being killed or seriously injured each year as a result of commercial fishing activities.

"(C) Proposed management measures or voluntary actions for the reduction of incidental taking by commercial fisheries. Such proposed measures and actions shall be developed in light of the plan's immediate objective of reducing incidental lethal and serious injury take by commercial fisheries by the same proportion as their proportion of the total lethal and serious injury take from all sources.

"(D) A long-term strategy to reduce, to insignificant rates approaching zero within 10 years, the incidental mortality and serious injury within the stock that results from commercial fishing operations.

"(3) Each incidental taking plan shall include projected dates for achieving the objectives of the plan. If the total lethal take exceeds the calculated acceptable removal level, the plan shall include measures the Secretary expects will reduce, within 6 months after commencement of fishing, the share of the lethal take that exceeds the calculated acceptable removal level and is attributable to commercial fisheries.

"(4)(A) At the earliest possible time (not later than 120 days) after the Secretary issues a final stock assessment listing a stock as a critical stock, the Secretary shall—

"(i) establish an incidental take team for such critical stock and appoint the members of such team in accordance with subparagraph (C); and

"(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such critical stock, and all the commercial fisheries that have lethal incidental takings from such stock.

"(B) The Secretary may charge an incidental take team to deal with a stock that extends over one or more regions, or multiple stocks within a region, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

"(C) Members of incidental take teams shall be individuals knowledgeable and experienced regarding the measures to conserve such stocks and to reduce any takings from such stock incidental to commercial fishing operations. Members may include representatives of Federal and State agencies, regional fishery management councils and commissions, academic and scientific organizations, environmental and fishery groups, and others as the Secretary considers appropriate. Incidental take teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of government, resource user interests, and non-user interests. Incidental take teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.) but their meetings shall be open to the public, after timely publicity on the time and place of such meetings.

"(D) Members of incidental take teams shall serve without compensation, but shall be reimbursed by the Secretary for reasonable travel costs and expenses incurred in performing their duties as members of the team.

"(E) Nothing in this section shall be construed to constrain the Secretary from establishing priority among classes of critical stocks covered by this subsection and exercising discretion (in consultation with scientific experts) to address such stocks in any fiscal year according to that priority.

"(5) Where the total lethal take from such a critical stock is estimated to be greater than the calculated acceptable removal level established in the stock assessment, the fol-

lowing procedures shall apply in the development of the incidental taking plan for the stock:

"(A) Not later than 6 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the critical stock to the Secretary, consistent with the other provisions of this section.

"(B)(i) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and proposed regulations to implement such plan, for public review and comment.

"(ii) In the event that the incidental take team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

"(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental taking plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary and the incidental take team shall meet every 6 months to monitor the implementation of the final incidental taking plan until such time that the Secretary determines that meetings are no longer necessary.

"(E) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

"(6) Where the total lethal take from a critical stock to which this subsection applies is estimated to be less than the calculated acceptable removal level established in the stock assessment, the following procedures shall apply in the development of the incidental taking plan for the stock:

"(A) Not later than 11 months after the date of establishment of an incidental take team for the stock, the team shall submit a draft incidental taking plan for the stock to the Secretary, consistent with the other provisions of this section.

"(B)(i) The Secretary shall take the draft incidental taking plan into consideration and, not later than 60 days following the submission of the draft plan by the team, the Secretary shall publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

"(ii) In the event that the incidental take team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed incidental taking plan and implementing regulations, for public review and comment.

"(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental taking plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary and the incidental take team shall meet on an annual basis to monitor the implementation of the final incidental taking plan until such time that the Secretary determines that [formal] meetings are no longer necessary.

"(E) The Secretary may, in consultation with the incidental take team, amend the incidental taking plan and implementing regulations as necessary, consistent with the procedures in this section for the issuance of such plans and regulations.

"(7) If the Secretary finds, prior to the issuance of a final incidental taking plan, that the incidental taking of marine mammals in a commercial fishery is having an immediate and significant adverse impact on the stock to which the plan would apply, the Secretary may, after consultation with appropriate Regional Fishery Management Councils and State fishery managers, prescribe emergency regulations to reduce, to the maximum extent practicable, such incidental taking. In prescribing such emergency regulations, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals, and shall conform such regulations, to the maximum extent practicable, with existing State or regional fishery management plans. Such regulations—

"(A) shall be published in the Federal Register together with the reasons therefor;

"(B) shall remain in effect for not more than 180 days, until such time as a final incidental taking plan for the stock is issued, or until the end of the applicable fishing season, whichever is earlier; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

"(e) REGULATORY MEASURES.—(1)(A) The Secretary shall, after notice and opportunity for public comment, promulgate regulations to implement an incidental taking plan necessary to accomplish the objectives set forth in [subsection (i).] *subsections (d) and (i).*

"(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary to modify the incidental taking plan at the request of the appropriate Regional Fishery Management Council or State or tribal management authority.

"(2) In implementing an incidental taking plan issued pursuant to this section, the Secretary may promulgate regulations which include, but are not limited to, measures to—

"(A) establish fishery-specific incidental lethal taking limits or restrict commercial fisheries by time or area;

"(B) register commercial fishing vessels as set forth in subsection (f);

"(C) require the use of alternative gear techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

"(D) educate commercial fishermen and other individuals, through workshops and other means, on the importance of reducing the incidental lethal taking of marine mammals from critical stocks; and

"(E) monitor the level of the incidental lethal taking of marine mammals in the course of commercial fishing operations, as set forth in subsection (h).

"(f) REGISTRATION OF VESSELS.—(1) Subject to the provisions of this subsection, the Secretary may develop a system to register commercial fishing vessels and to assess fishery effort, where such system is necessary, to understand the interaction between commercial fisheries and marine mammal stocks in a region.

"(2) In developing a registration system to understand such interactions, the Secretary shall rely upon existing Federal, State, or tribal data bases which provide the following information about an affected commercial fishery:

"(A) The approximate number of vessels participating in the fishery.

"(B) The identity of specific vessels to be registered.

"(C) The owner [of] or operator, or both, of such vessels.

"(D) The time period in which the fishery occurs.

"(E) The approximate geographic location, or its official reporting area where the fishery occurs.

"(F) The description of fishing gear, including the appropriate unit of fishery effort.

"(3) The incidental take teams shall advise the Secretary as to whether existing Federal, State, or tribal data bases are capable of being utilized to understand the interaction between commercial fisheries and critical stocks in a region. If the Secretary determines, after consultation with such a team, that data bases for specific fisheries which provide the information required under paragraph (2) are not available to the Secretary or the team, the Secretary may require through regulation separate registration to obtain the information set forth in paragraph (2).

"(4)(A) The Secretary may, as a condition of accepting a Federal, State, or tribal registration as adequate for the purposes of this section, require such registration to be supplemented by the requirement that the vessels so registered display a decal or other evidence, issued by the registering authority, that indicates the registration is current.

"(B) To the extent the Secretary determines that separate registration is required for a specific fishery pursuant to paragraph (3), the Secretary is authorized to charge a fee for the issuance of a decal or other evidence indicating the registration is current. The fee charged under this subparagraph shall not exceed the administrative costs incurred in issuing the decal or other evidence. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the [issuances] *issuance* of such decal or other evidence.

"(5) The costs of maintaining a separate registry system for a specific fishery pursuant to paragraph (3) shall be covered through Federal appropriations.

"(6) The Secretary may include within a registration system under this subsection only those vessels that fish in a fishery that has frequent or occasional incidental taking of marine mammals.

"(g) REPORTING REQUIREMENT.—The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental lethal and serious injury takings of marine mammals in the course of commercial fishing operations to the Secretary at the end of each fishing trip on a standard form to be developed by the Secretary under this section. Such form shall be readable by computer or other machine and shall require the vessel owner or operator to provide the following:

"(1) The vessel name, and Federal, [State] *State*, or tribal registration numbers of the registered vessel.

"(2) The name and address of the vessel owner or operator.

"(3) The name and description of the fishery.

"(4) The species of marine mammal incidentally killed or seriously injured, and the date and time of such incidental taking.

"(5) The time and period in which the fishery occurred.

"(6) The approximate geographic location of the incidental taking.

"(h) MONITORING.—(1) The Secretary may establish a vessel observer program to monitor incidental lethal and serious injury takings of marine mammals during the course of commercial fishing operations. The purpose of the monitoring program shall be to develop independent information on interactions between commercial fisheries and marine mammals and to verify reporting of incidental lethal and serious injury takings under subsection (g). Observers may perform other tasks including, but not limited to—

"(A) recording other sources of mortality;

"(B) recording the number of marine mammals sighted during the observation period; and

"(C) other scientific investigations, including collection of marine mammal tissues.

"(2) Commercial fishing vessels shall carry observers on board, when requested by the Secretary, to the extent that the vessel can safely accommodate the observer. The owner or operator of a vessel who refuses to carry an observer shall be subject to a civil penalty, pursuant to subsection (j).

"(3)(A) The Secretary may establish an incidental take monitoring program to achieve the objectives of this [paragraph] *subsection*, which may include, but not be limited to, direct observation of fishing activities from vessels, airplanes, video observation, or points on shore.

"(B) Individuals engaged in such monitoring program shall collect scientific information on [fisheries] *marine mammal interactions* consistent with the requirements of this [paragraph] *subsection*.

"(4) The cost of the monitoring program shall be funded by Federal appropriations, and *the* Secretary shall allocate available observers among fisheries consistent with the following priority:

"(A) The highest priority shall be given to fisheries that incidentally lethally take or seriously injure animals from (i) stocks designated as depleted on the basis of their listing as endangered or threatened species under the Endangered Species Act of [1993,] *1973*, or (ii) critical stocks.

"(B) The second highest priority shall be given to fisheries other than those described in subparagraph (A) in which the greatest incidental lethal take and serious injury of marine mammals occurs.

When the Secretary determines [the] *that* sufficient observation of a specific fishery has occurred, the Secretary may discontinue such observation and direct available observer resources to the next fishery in priority. Nothing in this subsection precludes the Secretary from resuming observation of a fishery when necessary to achieve additional verification of the nature of interactions with marine mammal stocks.

"(5) Notwithstanding paragraph (4), the Secretary may initiate, where necessary, additional monitoring programs to gather information on the interaction between commercial fisheries and marine mammal stocks not identified as critical stocks. Such information may be used to verify—

"(A) the numbers of incidental lethal and serious injury takings of marine mammals in a commercial fishery, and the rate of such takings;

"(B) impacts on marine mammals of changes in fishing patterns or technologies; and

"(C) the accuracy of reporting, by vessel owners and operators, of the lethal and serious injury takings of commercial fishing vessels.

"(i) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce their rates of incidental lethal or serious injury taking, to insignificant rates approaching zero within 10 years after the date of enactment of this section.

"(2) Fisheries which maintain insignificant serious injury and mortality rate levels approaching zero shall not be required to further reduce their mortality rates.

"(3) Three years after such date of enactment, the Secretary shall review the [progress,] *progress of commercial fisheries*, by fishery, toward reducing mortality and serious injury rates to insignificant rates approaching zero. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any *commercial* fishery for which no information exists on its incidental serious injury or mortality rate of marine mammals.

"(4) If the Secretary determines after review under paragraph (3) that the rate of incidental lethal and serious injury taking in a *commercial* fishery is not consistent with paragraph (1), then the Secretary shall make recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on further actions to achieve the goal specified in paragraph (1).

"(j) PENALTIES.—(1) Except as provided in paragraph (2), a person who violates this section, or any regulations thereunder, may be assessed a civil penalty of not more than $5,000 for each violation, and shall not be subject to penalty under any other provision of this Act. The penalty shall reflect the severity of the violation in relation to preventing the reduction of incidental lethal taking of marine mammals, or the accomplishment of other express objectives of this section.

"(2) Intentional killing of marine mammals, or failure to report incidental lethal takings of marine mammals as required by this section, shall be subject to the penalties in section 105.

"(3) Each owner or operator of a vessel engaged in a fishery that has a remote likelihood of or no known incidental taking of marine mammals, and the master and crew members of such vessel, shall not be subject to penalties under this section or any other provision of this Act for the incidental taking of marine mammals if such owner or operator reports to the Secretary in accordance with subsection [(f)(4)] *(g)(4)*.

"(k) VOLUNTARY MEASURES.—Nothing in this section shall be construed to limit the Secretary's authority to permit voluntary measures to be utilized in reducing the incidental taking of marine mammals in commercial fisheries.

"(l) DEFINITIONS.—For purposes of this section—

"(1) the term 'calculated acceptable removal level' means the realistic minimum population of a stock, multiplied by the net productivity rate of the stock, multiplied (if applicable) by a recovery factor;

"(2) the term 'critical stock' means a marine mammal stock that is listed as a Class 1 or 2 stock pursuant to subsection (c)(1)G);

"(3) the term 'incidental take team' means an incidental take team established under subsection (d)(4);

"(4) the term 'incidental taking plan' means an incidental taking plan developed under subsection (d);

"(5) the term 'maximum net productivity level' means the population size of a stock which results in the greatest net productivity;

"(6) the term 'net productivity' means the estimated or theoretical annual increase in population numbers resulting from additions to the population due to reproduction, less the losses due to mortality;

"(7) the term 'net productivity rate' means the net annual per capita rate of increase of a stock at [is] *its* maximum net productivity level;

"(8) the term 'non-critical stock' means a marine mammal stock that is listed as a Class 3, 4, or 5 stock pursuant to subsection (c)(1)(G);

"(9) the term 'realistic minimum population' means an estimate of the number of animals in a stock that provides reasonable assurance that the population size is equal to or greater than the estimate; and

"(10) the term 'recovery factor' means the number that is applied to the calculation of a calculated acceptable removal level to provide reasonable assurance that a stock will recover to its optimum sustainable population.".

SEC. 7. PENALTIES; PROHIBITIONS.

(a) CIVIL PENALTIES.—Section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) is amended by inserting ", except as provided in section [118(j)."] *117(j),"* immediately after "thereunder".

(b) CRIMINAL PENALTIES.—Section 105(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(b)) is amended by inserting "(except as provided in section [118(j))"] *117(j))"* immediately after "thereunder".

(c) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended by striking "and 114" *114 of this title or title III"* and inserting in lieu thereof "114, and [118".] *117 of this title and title IV"*.

SEC. 8. ALASKA HARBOR SEALS AND GULF OF MAINE HARBOR PORPOISES.

Notwithstanding any other provision of this Act, including section [118] *117* of the Marine Mammal Protection Act of 1972 (as added by this Act), the Secretary of Commerce shall establish an incidental take team for the harbor seal stock in Alaska and for the harbor porpoise stock in the Gulf of Maine, within 60 days after the date of enactment of this Act. The incidental take teams shall begin work immediately on a draft incidental taking plan in accordance with such section [118,] *117*, and shall use the best scientific information available. The draft incidental taking plan shall be reviewed by the Secretary, after consultation with scientific experts as described in subsection (b) of such section [118] *117* and after notice and opportunity for public comment, and shall be approved and implemented as quickly as practicable.

SEC. 9. AUTHORIZATION TO DETER MARINE MAMMALS.

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:

"(d)(1) Except as provided in paragraph (2), the provisions of this Act shall not apply to the use by any person of measures to deter marine mammals from—

"(A) damaging the gear or catch of commercial or recreational fishermen;

"(B) damaging private or public property; or

"(C) endangering personal safety,

so long as such measures do not result in marine mammal death or serious injury.

"(2) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods through regulation under this Act.

"(3) The authority to deter marine mammals pursuant to paragraph (1) applies to all marine mammals, including all stocks designated as depleted under this Act.".

SEC. 10. TREATY RIGHTS.

Nothing in this Act, including any amendments made by this Act, is intended to abrogate or diminish existing Indian treaty fishing or hunting rights, and regulation of Native American fishing and hunting activities shall be limited to measures consistent with existing treaty rights.

SEC. 11. TRANSITION RULE.

Section 114(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by striking "ending April 1, 1994," and inserting in lieu thereof "until superseded by regulations prescribed under section [118,".] *117,".*

SEC. 12. TECHNICAL AMENDMENTS.

(a) DEFINITIONS.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended by redesignating the last three paragraphs as paragraphs (16), (17), and (18), respectively.

(b) MARINE MAMMAL HEALTH AND STRANDING RESPONSE.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended—

(1) by redesignating title III, as added by Public Law 102-587 (106 Stat. 5060), as title IV; and

(2) by redesignating the sections of that title (16 U.S.C. 1421 through 1421h) as sections 401 through 409, respectively.

SEC. 13. HUMAN ACTIVITIES WITHIN PROXIMITY OF WHALES.

(a) LAWFUL [APPROACHES.—IT] APPROACHERS.—In waters of the United States surrounding the State of Hawaii, it is lawful for a person subject to the jurisdiction of the United States to approach, by any means other than an aircraft, no closer than 100 yards to a humpback whale or any other whale, regardless of whether the approach is made in waters designated under section 222.31 of title 50, Code of Federal Regulations, as cow/calf waters.

(b) TERMINATION OF LEGAL EFFECT OF CERTAIN REGULATIONS.—Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.

SEC. 14. PINNIPED-FISHERY INTERACTION TASK FORCE.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 118. PINNIPED-FISHERY INTERACTION TASK FORCE.

"(a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provision of this title, the Secretary may permit the lethal removal of pinnipeds in accordance with this section.

"(b) APPLICATION.—Any person may apply to the Secretary to authorize the lethal removal of pinnipeds identified as habitually exhibiting dangerous or damaging behavior that cannot otherwise be deterred. Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the removal.

"(c) ACTIONS IN RESPONSE TO APPLICATION.—(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines that such sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

"(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

"(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice, the Pinniped-Fishery Interaction Task Force shall—

"(A) recommend to the Secretary whether to approve or deny the proposed lethal removal of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of removal, criteria for evaluating the success of the action, and the duration of the authority; and

"(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

"(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the lethal removal, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

"(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted lethal removal or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary and the Secretary shall disband the Task Force.

"(d) CONSIDERATIONS.—In considering whether an application should be approved or denied, the Task Force and the Secretary shall consider—

"(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

"(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

"(3) the extent to which such pinnipeds are causing undue harm, impact, or imbalance with other species in the ecosystem, including fish populations; and

"(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

"(e) LIMITATION.—The Secretary shall not approve lethal removal for any pinniped from a species or stock that is listed as threatened or endangered under the Endangered Species Act of 1973, designated as depleted under this Act, or identified by the Secretary as a critical stock under section 117 of this Act.".

AMENDMENT NO. 1550

(Purpose: To make an amendment in the nature of a substitute)

Mr. JOHNSTON. Madam President, I send a substitute amendment to the desk on behalf of Senators KERRY and STEVENS and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. KERRY for himself and Mr. STEVENS proposes an amendment numbered 1550.

Mr. JOHNSTON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. KERRY. Madam President, today I am joined by my good friend and colleague, Senator TED STEVENS in offering legislation to reauthorize the Marine Mammal Protection Act. I am pleased to bring this legislation to the Senate floor and I hope my colleagues will join us in supporting the important initiative to establish a new regime to protect marine mammal stocks during their interactions with commercial fishing operations.

The bill before us today is a bipartisan effort that is the product of many months of hard work. This substitute amendment to S. 1636 is the result of extensive discussions with and comments from the National Marine Fisheries Service, the Marine Mammal Commission, conservation and animal protection groups and the fishing industry. All have worked tirelessly to meet the April 1, 1994 statutory deadline and I believe we will achieve that goal.

The bill before us has the backing of the vast majority of those groups involved in its development. The Department of Commerce's lead agency, the National Marine Fisheries Service [NMFS] supports this proposal. We have worked closely with the Marine Mammal Commission. Additionally, the fishing industry and a large number of environmental organizations including the Center for Marine Conservation, the World Wildlife Fund, the Audubon Society, and the Marine Mammal Center, among others, endorse this effort as well.

Our legislation addresses a number of issues surrounding the interaction between marine mammal stocks and commercial fishing operations. The legislation includes: First, a prohibition of intentional killing of marine mammals; second, mandatory vessel registration; third, mandatory observer coverage; fourth, general emergency authority for the Secretary of Commerce; fifth, a requirement that stock assessments be made of all stocks and incidental take reduction plans be prepared for those stocks in need; sixth,

provisions for the permitting of endangered marine mammals; and seventh, imposition of liability for noncompliance with incidental take reduction plans.

Overall, we have made some significant additions to strengthen the original Marine Mammal Protection Act [MMPA] and I am attaching a detailed summary of the major provisions in this legislation at the end of this statement. For the first time, the MMPA will now explicitly outlaw the intentional killing of marine mammals by commercial fishermen, which is allowed in the current act. Also included is language that mandates commercial fishing interests to achieve, within 10 years, a zero mortality rate goal.

Additional provisions that do not appear in the original act give the Secretary of Commerce emergency authority to protect any marine mammal stock he concludes may be in danger and to create a scientific advisory group.

I would like to address two issues that I believe have produced a great deal of misinformation about the development of this legislation: The first is the treatment of endangered species. The second is the so-called burden of proof issue.

Regarding endangered marine mammals, some have claimed that this bill would weaken the Existing Marine Mannal Act by allowing the killing of endangered species. In fact, both the current Marine Mammal Protection Act and the Endangered Species Act contain provisions under which permits may be issued to incidentally take an endangered marine mammal. While our bill also provides for such permits, the criteria for issuing such a permit under our substitute amendment are actually tougher than those contained in the existing Endangered Species Act.

With regard to the second issue, we believe that the term "burden of proof" has been misrepresented. Our revised bill would maintain the same moratorium on interactions with marine mammals that has been in place under the interim exemption but it replaces the fishery exception with a detailed, scientifically based process for monitoring and protecting marine mammals that interact with fisheries, placing emphasis on those stocks that come in most frequent contact with fishermen.

In addition, this bill provides numerous safeguards that are not currently provided under the interim exemption. These include: suspension or revocation of an individual fishermen's authorization to take marine mammals if that fisherman is found to have seriously violated the incidental take provisions; authority to the Secretary of Commerce to promulgate regulations to address urgent problems with any stock; conservative procedures for estimating calculated removal levels; mandatory compliance with the incidental take reduction plans; and measures to ensure that marine mammal populations will recover to or remain above the optimum sustainable population level.

To provide some context for the legislation before us, let me summarize the significant relevant events of the 22 years since the original Marine Mammal Protection Act was passed in 1972.

The original MMPA has far exceeded expectations in its protection of dolphins, whales, seals, and sea lions among other marine mammal stocks. Prior to 1972, when the original MMPA was enacted, hundreds of thousands of marine mammals were killed each year, intentionally from hunting and accidentally due to their interactions with commercial fishermen.

Over the years, the act has been reviewed and reauthorized a number of times, most recently in 1988. The 1988 amendments were the direct result of a court ruling, called the Kokechik decision, which blocked the issuance of any new permits to fishermen who interact in any way with marine mammals. If the Congress hadn't responded, this decision would have shut down the commercial fishing industry in the United States.

Therefore, in 1988, Congress passed a 5-year moratorium, called the interim exemption, which established a moratorium on interactions with marine mammals, but provided an exception to the moratorium for commercial fishing operations unless the marine mammals involved were from a depleted stock. In addition, NMFS was required to collect data on unknown marine mammal stocks and develop a new management regime that is legal and workable. To assist NMFS in its information collection the fishermen were required to keep logbooks and carry observers on board their vessels.

NMFS developed a regime and released it for comments in November, 1992. It was resoundingly rejected by the environmental community and the fishing industry and called cumbersome and unworkable. Both the environmentalists and the fishermen decided to begin negotiations to develop their own compromise alternative. This effort began over 1 year ago with participation from over 50 groups representing conservationists, animal protection activities, and fishing interests. In addition, NMFS and the Marine Mammal Commission sent representatives. Meetings were held in Washington, DC, and Washington State over the course of many months.

In June, 1993, on the final day of the mediated session where all the groups were gathered to sign what was termed the "negotiated agreement," many of the animal protection representatives withdrew support while the conservation groups and the fishing industry signed the agreement.

At that point, I requested a hearing by the Senate's National Ocean Policy Study. I chaired a hearing in July 1993, to review several viewpoints—the NMFS proposal, the negotiated agreement signed by the fishing industry and the conservation groups, and the concerns of the animal rights contingent of the environmental community that had not signed on to the agreement.

At that time, Senator STEVENS and I asked all parties to go back and meet again and try to reach consensus on outstanding issues. The parties met for 3 days in August of last year for this purpose. Unfortunately, no agreement was reached.

Congress still faced—and faces—an April 1, 1994, statutory deadline to enact new legislation to replace the 5-year interim exemption. In November, the Senate Commerce Committee considered legislation, S. 1636, based upon the concepts in the negotiated agreement. However, at that time, I stated publicly that this bill before the committee was a work in progress and that many outstanding issues would be addressed over the coming months. We called upon all parties to come in and discuss their concerns and propose specific legislative language changes to our committee proposal.

For the next several months, we collected comments from and met with representatives of all interested parties and prepared a draft substitute that has been circulating and changing for the past several weeks. Either I or my staff have met with everyone who has called us. The agency and the Marine Mammal Commission have now indicated their approval. The fishing industry and many of the conservation groups are satisfied with our compromise product. In addition, I met last week with a number of concerned animal rights groups and I believe that we have addressed 90 percent of their concerns in this final draft. While a compromise, by definition, cannot give all interested parties everything they want, I believe we have developed a strong and fair bill that will protect and conserve marine mammal stocks and bring back those stocks that are depleted, without shutting down our commercial U.S. fisheries.

In conclusion, I would like to take a moment to acknowledge all those who assisted in forging this compromise legislation before us. I thank my staff and the staff of the Commerce Committee who have worked so long and hard to get this bill to the floor. In particular, this bill would not be before us without the efforts of our Lila Helms, Penny Dalton, Earl Comstock, and Trevor McCabe who spent literally hundreds of hours over the past year crafting this legislation. Finally, I want to thank Kate English and Sarah Woodhouse of my office who have been deeply involved in moving this legislation forward.

This bill is an excellent example of bipartisan cooperation in policymaking. If we continue our efforts I know we can achieve our goals of enacting strong, environmentally sound legislation to revise the Marine Mammal Protection Act by the deadline of April 1, 1994. I hope my colleagues will support this important initiative which we are introducing today.

I ask unanimous consent that a section-by-section analysis be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION SUMMARY OF THE COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 1636

SECTION 1. SHORT TITLE

This section lists the title of the bill, which is the Marine Mammal Protection Act Amendments of 1994.

SECTION 2. PURPOSES

This section sets forth six purposes for the reauthorization of the MMPA: (1) authorizing of appropriations; (2) ensuring that the incidental mortality and serious injury in commercial fisheries does not reduce marine mammal populations below sustainable levels; (3) prohibiting the killing of marine mammals in the course of commercial fishing operations; (4) improving efforts for identifying and addressing the most significant problems involving incidental mortality and serious injury of marine mammals in commercial fishing operations; (5) ensuring that the procedures for authorizing the incidental taking of marine mammals in commercial fisheries is consistent with the long term objective of reducing incidental mortality and serious injury from commercial fishing operations to insignificant rates approaching zero; and (6) continuing cost-effective monitoring programs.

SECTION 3. AUTHORIZATION OF APPROPRIATIONS

This section would extend the authorization of appropriations through FY 1999 for the Department of Commerce (DOC), the Department of the Interior (DOI), and the Marine Mammal Commission (Commission) for their responsibilities under the Marine Mammal Protection Act of 1972 (MMPA). There is additional funding to provide observer coverage on commercial fishing vessels which are required to carry observers under new section 118 of MMPA.

SECTION 4. MORATORIUM AND EXCEPTIONS

Section 4(a) would amend section 101 of the MMPA by inserting "harassment" as a distinct classification of action covered by the moratorium imposed by the MMPA. Previously, harassment was included under the definition of "taking."

Section 4(b) would amend section 101(a)(1) of the MMPA to make minor changes in the process for issuing permits for the import of marine mammals for research and public display.

Section 4(c) would amend section 101(a)(2) of the MMPA to reflect the addition of new section 118, which provides the regime for the incidental taking of marine mammals in commercial fisheries.

Section 4(d) amends section 101(a)(5) of the MMPA to add a new paragraph (D) to provide for the annual authorization of activities, other than commercial fisheries, by citizens of the United States, that cause the incidental, but not intentional, harassment of marine mammals. An authorization may only be granted if the Secretary (which is defined in the existing MMPA to mean either the Secretary of Commerce or the Secretary of the Interior, depending on the marine mammal stock in question) finds that the harassment will have no more than a negligible impact on the marine mammal stock, and that the activity will not cause an unmitigable adverse impact on the availability of animals in such stock for taking for subsistence purposes. The paragraph also provides that the Secretary must impose appropriate conditions on the issuance of an authorization to ensure the least practicable impact on the stock and that there is no unmitigable impact on subsistence, and to require an appropriate monitoring and reporting program. In cases where subsistence stocks are impacted, the Secretary must require independent peer review of the monitoring and research proposals related to such authorization. The sponsors intend that the Secretary will encourage extensive consultation between affected parties on appropriate monitoring, reporting and mitigation measures in granting authorizations under this paragraph.

Section 4(f) would further amend section 101(a)(5) by adding a new paragraph (E) in order to allow the Secretary to permit for periods of three years the incidental, but not the intentional, taking in the course of commercial fishing operations of marine mammals stocks designated as depleted because of their listing as endangered or threatened under the Endangered Species Act. A permit would only be granted if the Secretary determines: 1) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the species or stock; 2) a recovery plan has been developed or is being developed for the stock under the Endangered Species Act; and 3) where required for such stock under new section 118, a monitoring program is established, vessels are registered, and an incidental take reduction plan has been developed or is being developed for such marine mammal species or stock. Upon a determination that these requirements have been met, the Secretary will issue a permit for a three-year period for those vessels required to register under section 118. Those vessels not required to register under section 118 (Category (iii) vessels) would be allowed to conduct operations under a general authorization, but would be subject to penalties if they fail to report any incidental mortality or injury to marine mammals as required under new section 118. If the Secretary determines during a fishing season that incidental mortality or serious injury in a commercial fishery is having more than a negligible impact on a threatened or endangered species or stock, then the Secretary must use the emergency authority granted under section 118 to protect such marine mammal stock or species, and may modify any permit granted as necessary to reduce the impact. The Secretary may suspend or revoke a permit if the conditions and limitations set forth in the permit are not being complied with. It is intended that the Secretary will work to ensure that the requirements imposed on fishermen seeking a permit under this subsection be fully integrated into the incidental take reduction plan process under new section 118, so that the two procedures are as consistent and streamlined as possible. In using a negligible impact standard under this subsection, the bill continues the higher standard of protection found in the existing MMPA, rather than using the lesser "no jeopardy" standard promulgated under the Endangered Species Act at 50 CFR 402.02.

Section 4(g) amends section 101(a) to add a new subsection (6) at the end. New subsection (6) has been added to address a consistent problem with the import ban in the existing MMPA that arises when Alaska Natives engage in cultural exchanges with other Native peoples, and when travelers who have bought authentic Native handicrafts made of marine mammal parts in Alaska attempt to reenter the United States after driving south from Alaska through Canada. Under the existing MMPA, Alaska Natives and other persons who are legitimately in possession of authentic Native handicrafts made of marine mammal parts have those items confiscated when they attempt to enter the United States with those items. New subsection 101(a)(6) of the MMPA would address this problem by allowing persons who have bought authentic Native handicrafts made from marine mammal parts to take those items out of the United States in their personal possession and then reenter the United States with those same items. It would also allow persons who are given gifts or otherwise acquire Native handicrafts made of marine mammal parts as part of a cultural exchange to bring those items back into the United States, and would also allow the Native peoples of other Arctic nations to enter the United States wearing their traditional clothing made of marine mammal parts, as well as bring in raw marine mammal parts for the purpose of sharing their native skills with Alaska Natives and others in the United States. This new provision would not allow the importation of Native handicrafts for commercial purposes, though this restriction is not intended to prohibit the sale of an item that was created as part of a demonstration of handicraft skills in the course of a cultural exchange.

Section 4(h) would amend section 101(b) of the MMPA to add a new paragraph which is intended to ensure that the Secretary bears the burden of proof in any hearing under section 101(b), a proceeding under section 117(b)(2), or any determination or finding made by the Secretary under the Act which affects Alaska Native subsistence users or marine mammal stocks taken for subsistence use. The standard of review set forth in the new paragraph is that of substantial evidence on the basis of the record as a whole. Inclusion of this standard is not intended to create an independent requirement that all actions affecting Alaska Native subsistence users or subsistence stocks be subject to a hearing on the record, rather it is intended that the standard of review for such a hearing be used, with the burden of proof placed upon the Secretary to demonstrate in each case that such standard has been met. A hearing is required whenever specifically provided for in the MMPA, as is the case under the existing provisions of section 101(b) and under new section 117(b)(2). The last sentence of the new paragraph specifically limits the standing to use this provision to Alaska Native organizations representing persons to which subsection 101(b) applies. The term Alaska Native organizations is intended to include any legitimate representative of Alaska Native subsistence users, including local and state governmental entities.

Section 4(i) would amend section 101(c) of the MMPA by deleting the existing language found there, which is no longer applicable, and inserting in its place a new provision which would allow a person to kill a marine mammal in self defense or in defense of another person without violating the MMPA.

Under the existing MMPA no such exemption exists, with the result that persons who have found themselves forced to kill a marine mammal in self-defense have then been exposed to penalties. This amendment would make it legal to kill or wound a marine mammal in self defense, so long as the person reports the incident to the Secretary within 48 hours. It is intended that notification of an incident to either Secretary would suffice.

SECTION 5. PERMITS

Section 5 would amend section 104 of the MMPA with respect to the issuance of permits for scientific research. The amendment would allow the issuance of permits for legitimate scientific research involving the lethal taking of a marine mammal if the Secretary determines, after notice and public comment, that non-lethal methods are not feasible. In addition, the amendment would allow the Secretary to grant a general authorization for research that is not likely to involve the taking or harassment of marine mammals. In order to operate under the general authorization, applicants must notify the Secretary by letter and comply with the requirements.

SECTION 6. CONSERVATION PLANS

Section 6 would amend section 115(b) of the MMPA by adding a new paragraph to clarify that conservation plans issued under that section should incorporate incidental take reduction plans implemented under new section 118.

SECTION 7. STOCK ASSESSMENT

This section would amend title I of the MMPA by adding a new section 117 to provide for stock assessments on all marine mammal stocks. New section 117(a) would require the Secretary, after consultation with the appropriate regional scientific review group, to prepare a draft stock assessment for each marine mammal stock by August 1, 1994. In the draft stock assessment the Secretary is required to categorize each of the stocks in one of two categories, either—(1) being healthy and not in any significant danger of declining; or (2) as being of some concern, because they are depleted, threatened, endangered, or have a level of anthropogenic mortality that exceeds their annual population growth rate. The Secretary is expected to place each stock in either one category or another. The stock assessments are intended to provide an accurate estimate of the status of marine mammal stocks based on the best scientific information currently available. This subsection also directs the Secretary to calculate the number of animals that can be removed from a species or stock while still providing reasonable assurance that the species or stock will eventually recover to its optimum sustainable population. In making such a calculation, the Secretary is required to use the best available scientific information, and it is expected that the determination, including the provision of reasonable assurance, would be made in accordance with accepted scientific methodology.

One of the main objectives of new section 117(a) is to establish a process to identify stocks falling into the second category, so that the Secretary knows where to focus scarce resources. This is the primary purpose of paragraph (7), in which the Secretary is asked to specify stocks in which anthropogenic mortality may be the reason for their decline or failure to recover. In specifying these stocks, it is expected that the Secretary will have some substantive reason to believe that anthropogenic mortality is the problem, because stocks identified under this paragraph are the focus of incidental take reduction plans under new section 118. The Secretary should not use this category as a catch-all for all stocks for which information is uncertain or limited.

Under new section 117(b), a ninety-day public notice and comment period is required, and provision is made for a proceeding on the record, when requested by an Alaska Native to which subsection 101(b) of the MMPA applies, for an assessment involving a stock taken for subsistence. The Secretary is required to publish a final stock assessment not later than 90 days after the close of the public comment period or final action on a subsistence proceeding.

New subsection 117(c) provides for review and revision of stock assessments, at least annually for stocks specified by the Secretary as needing attention or for which there is new information, and at least once every three years for all other stocks.

At least two independent regional scientific review groups are established under new subsection 117(d). These groups are intended to advise the Secretary on all aspects of the stock assessments, and should be a scientifically balanced group composed of individuals who are both knowledgeable and representative of diverse viewpoints and interests.

New subsection 117(e) reaffirms that the stock assessment provided under this new section is not intended to affect or modify the depletion determination and other protections provided to Alaska Native subsistence users under section 101(b) of the MMPA. It is intended that any determination by the Secretary that a stock is depleted would be based on the stock assessment made under new section 117.

SECTION 8. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Section 8 would amend title I of the MMPA by adding a new section 118 to govern the incidental taking of marine mammals in the course of commercial fishing operations. New section 118(a) establishes the scope of coverage of new section 118, as well as reiterates that it is the immediate goal of the MMPA to reduce incidental mortality and serious injury of marine mammals in commercial fishing operations to insignificant levels approaching a zero mortality rate. As stated in paragraph (2), it is intended that both new section 118 and new section 101(a)(5)(E) would govern the incidental taking in commercial fisheries of threatened or endangered marine mammal species or stocks.

New section 118(b) directs the Secretary to establish incidental take reduction plans for each marine mammal stock specified by the Secretary under new section 117(a)(7) which interacts with a commercial fishery listed under new section 117(f)(1)(A)(i) or (ii), which are those fisheries that cause frequent or occasional incidental mortality and serious injury of marine mammals. In addition, the Secretary may establish incidental take reduction plans for other marine mammal stocks, including populations that are not considered to be in danger, that interact with a commercial fishery which causes frequent mortality and serious injury if the Secretary determines that such fishery has an excessive rate, in comparison with other fisheries in the affected area or region, of incidental mortality and serious injury of marine mammals. If insufficient funding is available to allow for the development and implementation of incidental take reduction plans for all stocks to which new subsection (b) applies, then the Secretary is directed to give priority to the establishment of plans for those stocks in which the level of incidental mortality and serious injury exceeds the calculated removal level for that stock, those that have a small population size, and those that are declining most rapidly. These criteria are intended to ensure that scarce resources are focused where they will provide the greatest benefit to marine mammal stocks in the greatest need.

New section 118(b) also establishes detailed guidelines and time-frames for the development and implementation of incidental take reduction plans. Incidental take reduction plans would be required to include management measures or voluntary actions to reduce the incidental mortality and serious injury of marine mammals in fisheries, as well as a strategy for each fishery to reduce the incidental mortality and serious injury of marine mammals in each commercial fishery to insignificant levels approaching a zero mortality rate within ten years. For stocks in which incidental mortality and serious injury from a commercial fishery currently exceeds the calculated removal level, the incidental take reduction plan will be required to include measures the Secretary expects will reduce the mortality and serious injury to a level below the calculated removal level within six months. Where total anthropogenic mortality and serious injury exceeds the calculated removal level, a commercial fishery will have to reduce its incidental mortality and serious injury to the lowest level that is feasible for that fishery within six months.

In implementing incidental take reduction plans, the Secretary would be authorized to impose fishery management measures to the extent necessary to implement an incidental take reduction plan. This could where necessary to protect or restore a marine mammal stock, include, among other measures, actions to: (1) establish fishery-specific limits on incidental mortality and serious injury, or restrict fisheries by time and area; (2) require the use of alternative gear or techniques; (3) educate commercial fishermen through workshops; and (4) monitor the effectiveness of observer coverage.

Section 118(b) would also require the Secretary within 60 days of completing the final stock assessment, to establish and appoint members to incidental take reduction teams to develop incidental take reduction plans for marine mammal stocks. The teams can be requested to address a single stock that extends over one or more regions, or multiple stocks within a single region, based upon the Secretary's determination of which approach will best facilitate the development and implementation of incidental take reduction plans. The Secretary will be required to appoint to the teams individuals knowledgeable about measures to conserve marine mammal stocks and methods to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations. The teams are required to include representatives of each affected regional fishery management council and State, and may also include representatives of Federal agencies, interstate fishery commissions, academic and scientific organizations, environmental and fishery groups, Alaska Native organizations, Indian Tribes, and others as the Secretary considers appropriate. To the maximum extent practicable, each team is required to provide an equitable balance among interested parties. Incidental take teams would not be subject to the Federal Advisory Committee Act, but will be re-

quired to hold public meetings and provide adequate public notice of the time and location of the meetings. Members will serve without compensation, but will be reimbursed for their reasonable travel costs and expenses.

Incidental take reduction plans would be developed under new section 118(b) according to two timetables. A shorter timetable would apply for the development of incidental take reduction plans by teams in cases where the anthropogenic mortality and serious injury to a marine mammal stock specified under section 117(a)(7) is estimated to be greater than the calculated removal level for the stock. For stocks where incidental mortality and serious injury does not exceed the calculated removal level, a longer timetable would be applied. In the first case, a draft plan must be submitted by the team to the Secretary within six months of the team's establishment, while in the second it would be within eleven months. The incidental take reduction plans are required to be developed by consensus among the team members. To the extent that consensus cannot be reached, the team must advise the Secretary of the views of both the majority and minority. Upon receipt of a team's proposal, the Secretary must publish, within 60 days, a draft incidental take reduction plan in the Federal Register, specifying any changes the Secretary has made to the team's recommendations, including the reasons for the changes. A final incidental take reduction plan must be published in the Federal Register following a 90-day public comment period. The Secretary will continue to meet every six months with teams focusing on stocks whose incidental mortality exceeds the calculated removal level, and annually with teams for stocks where the incidental mortality is below the calculated removal level, until the Secretary determines that the objectives of the incidental take reduction plan are met.

New section 118(c) would allow the Secretary to take emergency action to protect marine mammal stocks that the Secretary finds are suffering an immediate and significant adverse impact from incident mortality and serious injury due to commercial fishing. In taking such action, it is intended that the Secretary would, to the extent practicable, consult with the Marine Mammal Commission, regional fishery management councils and state fishery management authorities, and the appropriate incidental take reduction team before taking any emergency action, and should, whenever possible, take such action in a manner consistent with existing fishery management plans.

New section 118(d) would require the Secretary to continue the observer coverage established under section 114 of the existing Act. Vessel owners engaging in fisheries with frequent and occasional incidental mortality and serious injury of marine mammals must carry observers if requested to do so by the Secretary. The purpose of observer coverage is to enhance the quality of and verify the information received from reports submitted by vessel owners or operators. The assignment of observers must be fair and equitable, and no one individual or vessel or one group of individuals or vessels would be subject to overly burdensome observer coverage. This subsection also would mandate that the Secretary give priority to the allocation of observers to those fisheries that have incidental mortality and serious injury of marine mammal stocks designated as depleted on the basis of their listing as endangered or threatened under the Endangered Species Act, and then to those fisheries that have incidental mortality and serious injury of marine mammal stocks specified under section 117(a)(7) having the second highest priority. The Secretary must have the consent of the vessel owner of a vessel listed under section (f)(1)(A)(iii) to station an observer on the vessel, except when using the emergency authority available under subsection (c).

New section 118(e) reaffirms the MMPA's commitment to reducing incidental mortality and serious injury in commercial fisheries to insignificant levels approaching a zero mortality and serious injury rate within 10 years. The Secretary is required to review the progress of commercial fisheries toward that goal three years after the date of enactment of this bill, and to submit to Congress a report on that progress within four years of such date. This subsection also provides that fisheries which maintain an insignificant level of incidental mortality and serious injury shall not be required to reduce those levels further. This provision is intended to ensure that commercial fisheries which have achieved this goal will not be shut down to achieve further insignificant reductions in marine mammal mortality and serious injury.

New section 118(f) would require the Secretary to continue, with modifications, the registration system developed under the 1988 amendments to the MMPA. The revised system would modify the existing classification and listing of fisheries which frequently, occasionally, or rarely take marine mammals. Under the new section 118(f), the Secretary would register vessels in fisheries which have frequent or occasional incidental mortality and serious injury of marine mammals. The Secretary would continue to charge a fee to cover the administrative costs of the program.

Under new section 118(f) category (i) and (ii) vessels would be authorized to engage in the lawful incidental taking of marine mammals provided that they have registered, the decal that may be required is displayed, they report any incidental mortality or injury of marine mammals, and they take on board an observer if requested by the Secretary. If the owner of a vessel is holding a valid certificate of exemption issued under section 114, then that vessel is deemed to have registered for the purposes of this subsection for the period during which the registration is valid. If the owner of a vessel fails to obtain or maintain an authorization, then the owner is deemed to have violated this title, and if the owner of a vessel fails to ensure that the decal or other physical evidence is displayed, then the owner is subject to a fine of not more than $100 for each offense. The owner of a vessel must be in compliance with any regulations to implement an incidental take reduction plan otherwise the owner is subject to the penalties of this title.

Further, new section 118(f) provides that any vessel listed in category (iii) is authorized to take marine mammals without registering provided that the owner adhere to the reporting requirements, and such vessels would not be subject to penalties for the indential taking of marine mammals as long as the owner reports any incidental mortality or injury to the Secretary in the appropriate manner.

New subsection 118(g) is similar to the reporting requirements found under existing section 114 of the MMPA. The owner or operator is required to report, on a standardized postage-paid form, all incidental mortality and injury of marine mammals. Specific language is included in the new subsection to require that the form used be capable of being readily entered into and usable by a computer data processing system. This requirement was included to prevent a repeat of what occurred under the reporting requirements of existing section 114, in which fishermen were required to file extensive, handwritten observations in log books which were never utilized by the federal government because money and personnel were not available to translate and enter the data into a computer system. It is intended that the new reporting forms will be simple and will result in usable data on marine mammal mortality that is readily accessible to the agency and the public.

New section 118(h) sets forth the penalties applicable under this section. It is intended that the Secretary shall use the discretion provided to ensure that the penalty is appropriate to the violation.

New subsections (i) and (j) clarify that nothing in this section prohibits the Secretary from employing voluntary measures to reduce marine mammal mortality, and, since the term "Secretary" is defined to mean the Secretary of Commerce for purposes of new section 118, that the Secretary of Commerce shall consult with the Secretary of the Interior on matters affecting marine mammal stocks under the Interior Secretary's jurisdiction.

SECTION 9. PENALTIES; PROHIBITIONS

This section makes technical and conforming changes to the provisions of the MMPA dealing with penalties and prohibitions.

SECTION 10. AUTHORIZATION TO DETER MARINE MAMMALS NONLETHALLY

This section would allow for the nonlethal deterrence of marine mammals which are damaging gear or catch by the owner of the fishing gear or catch or the employee or agent of the owner, which are damaging private property by the owner of private property, which are endangering personal safety, or which are damaging public property by a government employee. The measures used could not result in the death of or serious injury to a marine mammal. The Secretary must publish guidelines for use in safely deterring marine mammals in the Federal Register, and in the case of marine mammals designated as threatened or endangered under the Endangered Species Act, the Secretary must recommend specific measures which could be used to nonlethally deter marine mammals. If actions to deter marine mammals are not consistent with the guidelines, or specific measures in the case of marine mammals designated as threatened or depleted, the individual would be in violation of this Act. The Secretary could also prohibit any methods of deterrence through regulation if the Secretary determines, based on the best scientific information available, that the method of deterrence would have a significant adverse effect on marine mammals. Finally, the authority to deter marine mammals applies to all marine mammals.

SECTION 11. TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE

This section provides that nothing in this bill alters any treaty between the United States and any Indian tribe, and that, other than as specifically provided in the amendment made in section 4(h), nothing in this bill would alter or modify section 101(b) of the MMPA.

SECTION 12. TRANSITION RULE

This section provides for the transition between existing section 114 and new section 118 of the MMPA.

SECTION 13. TECHNICAL AND CONFORMING AMENDMENTS

This section makes technical and conforming changes to the MMPA and the Marine Mammal Health and Stranding Response Act.

SECTION 14. DEFINITIONS

This section adds the definitions of "calculated removal level", "Council", "harassment", "incidental take reduction plan", "incidental take reduction team", "net productivity rate", and "minimum population estimate" to the MMPA.

SECTION 15. HUMAN ACTIVITIES IN THE PROXIMITY OF WHALES

This section would allow individuals to approach lawfully a humpback whale or any other whale by any means other than aircraft at a distance no closer than 100 yards. The approach standard would apply only to the waters off the coast of Hawaii, and would include areas designated in regulation as cow/calf waters.

SECTION 16. PINNIPED-FISHERY INTERACTION TASK FORCE

This section would establish a new section 119 of the MMPA to govern the lethal and humane removal of identifiable nuisance pinnipeds that habitually exhibit dangerous or damaging behavior that cannot be deterred by any other means, and require a study of pinniped-fishery interactions in the Northwest.

The language of the bill remains as described in the January 25, 1994 Committee Report, except for the addition of a new section 119(f). This new section directs the Secretary of Commerce to conduct a study of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service on the interaction between fish and pinnipeds. The Secretary is to consult with other State and Federal agencies with expertise in pinniped-fishery interaction.

The study will evaluate fish behavior in the presence of predators generally; holding times and passage rates of anadromous fish in areas where they are vulnerable to predation; whether additional facilities exist, or could be reasonably developed, that could improve escapement of anadromous fish; and other relevant issues.

Subject to availability of funds, within 18 months after the passage of the Act the Secretary will report on the results of the study to the Senate Commerce Committee and the House Merchant Marine and Fisheries Committee.

The Secretary would not be able to use the study for determining whether to establish a Pinniped-Fishery Interaction Task Force, or in determining whether to approve or deny an application, until the study is complete. Further, the Secretary would not be able to delay or defer a decision to establish a Task Force or to approve or deny an application while the study is pending.

SECTION 17. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA

This section provides for cooperative agreements between the Secretary and Alaska Native organizations related to the conservation of marine mammals and co-management of subsistence use.

SECTION 18. BERING SEA MARINE ECOSYSTEM PROTECTION

This section provides for a study of the marine ecosystem of the Bering Sea in order to determine the causes of population declines in marine mammals, seabirds, and other living marine resources of that region.

SECTION 19. INTERJURISDICTIONAL FISHERIES ACT OF 1986

This section amends the provision of the Interjurisdictional Fisheries Act of 1986 which authorizes appropriations for a commercial fisheries failure or serious disruption affecting future production due to a fishery resource disaster. Authorized spending under this provision would be increased to $65 million annually for each of fiscal years 1994 and 1995.

SECTION 20. COASTAL ECOSYSTEM HEALTH

This section provides for conveyance of property on the Charleston Naval Base to the Department of Commerce for use by the National Oceanic and Atmospheric Administration. The Naval Base in Charleston is slated for closure in 1996 and the transfer is necessary in order to renovate a facility for other federal use.

Mr. STEVENS. Madam President, I give my thanks to Senator KERRY and his staff—in particular Lila Helms and Penny Dalton of the majority staff of the Commerce Committee—for their assistance in this bipartisan effort.

The 1988 reauthorization of the Marine Mammal Protection Act included an interim regime to govern commercial fisheries interactions with marine mammals. It followed a court of appeals' decision in Kokechik Fishermen's Association versus Federation of Japan Salmon Fisheries.

The interim regime set up a process to gather data, and directed the Secretary of Commerce to develop a new program for commercial fisheries' interactions with marine mammals.

The Secretary presented a proposed regime to Congress in the fall of 1992. But the fishing industry and the environmental community had serious concerns about the proposal.

In January 1993, representatives of the fishing industry and environmental organizations began working together on an alternative proposal. They completed it last June.

One month later, at a July Commerce Committee hearing, Senator KERRY and I reviewed the negotiated proposal and the administration's proposal. We asked the groups, the administration, and our staffs to sit down and blend the two proposals.

On November 9, 1993, Senator KERRY and I introduced S. 1636, which contained elements of both the administration proposal and the negotiated proposal. The bill was reported by the Commerce Committee on November 10, 1993.

Over the past months, Senator KERRY and I, and our staffs, have worked diligently to revise and improve the bill.

We have worked together to combine the many suggestions we have received.

And, Madam President, we have kept the process entirely bipartisan.

We have tried to find a balance between the fishing industry, the environmental community, the administration, and the Alaska Native community, whose interest in the commercial fisheries regime stems from a historical dependence on marine mammals for subsistence.

The revised bill provides increased protection for marine mammals—particularly for endangered and threatened marine mammals.

I believe the revised bill is one that the commercial fishing industry can work within. It is one that will allow our fisheries to continue without unnecessary disruption or burden.

ALASKA PROVISIONS

Senator KERRY and I worked together on the section-by-section analysis in the RECORD, which provides a summary of the provisions in the substitute bill.

Some of the items in the bill important to Alaska include:

The authorization of funding through 1999 for continued marine mammal research, and for the new commercial fishery regime.

A streamlined permitting process for scientific research not likely to result in the taking or harassment of marine mammals. This would make research on marine mammals in Alaska easier to accomplish.

The bill codifies the arrangement that has been worked out between Native subsistence harvesters, the oil industry and executive branch agencies regarding the authorization of activities—such as oil exploration—which disturb, or incidentally harass, small numbers of marine mammals.

The bill adds a new paragraph to section 101(b) of the MMPA to ensure that the Secretary bears the burden of proof when making regulations restricting subsistence taking—or any stock assessment which impacts subsistence stocks—or any determination or finding under this act which would affect subsistence users or stocks.

In my view, the Secretary should have to demonstrate, by substantial evidence on the record as a whole, that the Government is correct before taking action or publishing information that would restrict a legislatively-granted exemption. This provision does not in any way increase the Secretary's authority to regulate subsistence users.

This provision would make it be clear that the Secretary would have the burden of showing—based on substantial evidence—that a determination of depletion is justified.

Native subsistence users would also be allowed to request a hearing on the record if they disagree with the stock assessment under the new section 117. As with the hearing on regulations limiting the taking of subsistence stocks, the Secretary would have the burden of demonstrating that the stock assessment is supported by substantial evidence on the record as a whole.

These changes would help Alaska Natives to avoid being unnecessarily regulated under the existing law. The

changes would also help Alaska Natives to avoid spending millions of dollars to refute faulty stock assessments under the new section 117.

The bill would solve a problem relating to the MMPA's import ban which has occurred when Alaska Natives engage in cultural exchanges with other indigenous peoples. The bill would also help those who lawfully own marine mammal products to bring the items back into the United States after traveling.

A new subsection 101(a)(6) of the MMPA would allow marine mammal products to be imported into the United States when the item was carried out of the United States in conjunction with travel, or when it was acquired outside the United States as part of a cultural exchange by Alaska Indians, Aleuts, or Eskimos.

The provision also allows marine mammal products to be imported by Native inhabitants of Russia, Canada and Greenland in conjunction with their travel to the United States, or as part of their cultural exchanges with Alaska Indians, Aleuts and Eskimos.

This provision is particularly important to Alaskans in Western Alaska and in the Arctic as they continue to rekindle their ties with family and friends in Russia.

It is also important to visitors to Alaska who purchase Native handicrafts, and who in the past have had the handicrafts confiscated when they drive through Canada and try to reenter the United States.

The bill also includes a provision authorizing the Secretary to enter into cooperative agreements with Native organizations to conserve marine mammals. I have worked with the Indigenous People's Council for Marine Mammals to develop this provision. I believe it would allow the Alaska Native community to conserve marine mammals and protect their historic harvest rights to marine mammals.

The bill also creates a scientific research program to monitor the health and stability of the Bering Sea ecosystem and to resolve uncertainties about the decline in some Bering Sea marine mammal stocks.

I refer to the section-by-section analysis which Senator KERRY and I have submitted for the RECORD for a description of the other provisions of the bill, including the new commercial fisheries interaction program, but I wanted to briefly mention some of the other provisions which are important to Alaska.

Mr. HOLLINGS. Madam President, I am pleased that we are considering the Marine Mammal Protection Act Amendments of 1994. The legislation before the Senate is an amendment in the nature of a substitute to S. 1636, which was introduced by Senators KERRY, STEVENS, and PACKWOOD on November 8, 1993, and was reported without objection by the Commerce Committee last session. S. 1636 reauthorizes the Marine Mammal Protection Act [MMPA] for 6 years, and amends the Act to provide for a regime to govern the interactions between marine mammals and commercial fishermen. The amendment under consideration today reflects careful consideration and balancing of diverse viewpoints among the Committee members and addresses the legitimate concerns of the various interest groups which participated in its development.

In 1972, when the Congress enacted the MMPA, there was considerable debate over how far we should go in protecting marine mammals. Some environmentalists preferred tough restrictions which could have crippled our domestic fishing industry, while the fishing industry favored no regulations at all. The debate centered on striking the proper balance between the desire to protect marine mammals and the need to preserve important commercial fisheries. After long deliberation, Congress finally reached what has proven to be an effective compromise. The number of marine mammals taken by our fishermen has been reduced dramatically without seriously damaging the economic viability of most sectors of our domestic fishing fleet.

In the years since 1972, the central issue has changed very little. In reauthorizing this Act, we must again strike the proper balance. After long negotiations, I believe that we have reached such a compromise. Although I understand that not everyone is completely satisfied with all aspects of this bill, such is the nature of a compromise, and I am pleased to support the Marine Mammal Protection Act Amendments of 1994. I believe this legislation fine-tunes the MMPA, increasing the protection afforded to marine mammals without hurting the competitiveness of the American fishing industry.

The legislation before us today contains a new regime for protecting marine mammals in the course of commercial fishing with the following provisions: specific time tables and procedures for conducting marine mammal stock assessments and preparing incidental take reduction plans for those marine mammal population stocks in most need of attention; a prohibition against the intentional killing of marine mammals; a mandatory vessel registration system for those vessels that have frequent and occasional interaction with marine mammals; a mandatory observer program to verify the data on takes of marine mammals; and effective emergency authority for the Secretary of Commerce—Secretary—to control circumstances in which stocks are declining. The substitute amendment also contains a 6-year reauthorization of appropriations to carry out Federal activities under the MMPA.

More specifically, the interim system established by the 1988 amendments was designed to collect information regarding fishery-marine mammal interactions in order to develop a permanent regime to govern those interactions. S. 1636 would require publication of a stock assessment for each marine mammal stock based on the data that has been collected during the past 5 years.

The legislation also would establish a regulatory process to govern the interactions between marine mammals and commercial fisheries. Once the Secretary has completed the stock assessment, the Secretary determines whether the condition of the marine mammal population requires development of a plan for reducing incidental takings by fishermen so that the population may recover. The legislation also reiterates the longstanding goal of the Marine Mammal Protection Act, "to reduce incidental mortality and serious injury from commercial fishing operations to significant rates approaching zero," establishing a 10-year time line for that goal.

The proposed regime in S. 1636 as amended is based on an agreement reached between representatives of the fishing industry and several conservation organizations after extensive negotiations. Fishermen who interact with marine mammals must register and report their interactions. Fisheries which frequently take marine mammals also will be required to participate in an observer program.

S. 1636 will allow protection of all marine mammals with greatest emphasis being placed on those populations that are depleted and need the most assistance to recover. I commend the representatives of both the fishing industry and those conservation organizations that continued to participate in legislative discussions and made constructive recommendations on S. 1636.

In summary, the legislation before us today will strengthen and extend the protection afforded to marine mammals under the MMPA without damaging our important commercial fisheries. The legislation is consistent with the original goals and intent of the MMPA and will facilitate our attempts to meet these goals. Passage of S. 1636 as amended reaffirms our commitment to preserving and protecting this group of animals, and I urge my colleagues' support.

(By request of Mr. JOHNSTON, the following statement was ordered to be printed in the RECORD:)

Mrs. MURRAY. Madam President, I rise today in support of S. 1636, a bill to reauthorize the Marine Mammal Protection Act. I do so with some reservation, however.

Mr. President, the Pacific Northwest has been struggling for many years over the appropriate management of our natural resources, including water, timber, and salmon. It is this latter category I am concerned about today.

Of all the things we value in the Northwest, salmon are perhaps the greatest symbol of our cultural heritage.

Over the past decade, as bureaucrats have bickered and politicians have debated, the condition of this tremendous resource has deteriorated badly. On rivers throughout the region—rivers with dams, rivers without dams—once mighty salmon runs are withering away. At the same time, another valuable resource, marine mammals native to the region, have come back in great strength. In fact, you cannot take a boat ride anywhere in Puget Sound without encountering a seal or sea lion these days.

The combination of these two factors has created a very difficult and unfortunate circumstance: because they are voracious eaters, marine mammals now pose a direct threat, in many cases, to the continued viability of certain salmon populations.

Madam President, this bill provides limited authority to lethally remove marine mammals that can be identified as posing a threat to certain fish populations. This is a narrowly focused, short-term management tool designed to protect the continued viability of such populations. I support this provision, and believe it is needed in order to address critical situations.

I must say however, that I am sad it has come to this. The decline of our salmon runs is not news. We have known there are problems for a while now. Unfortunately, the wheels of government are slow to turn; even today, the region is without a comprehensive plan to conserve salmon habitat. There are efforts underway to address habitat issues. The President's forest plan calls for important riparian protection; the Northwest Power Planning Council has proposed a regional salmon strategy; and NMFS is working even now on a recovery plan for Columbia and Snake River salmon. These efforts will not come soon enough to save the steelhead that spawn—or used to spawn—in the Cedar and Sammamish Rivers. But I think ultimately, this issue will only be resolved through comprehensive habitat conservation planning.

I am pleased to recognize the committee substitute contains language at my suggestion that requires further study of salmon-pinniped interaction on a regionwide basis. This problem, while graphically illustrated by the Ballard Locks issue, is not limited to that area. I hope that the Secretary will examine this issue closely; specifically, we need to look at the root causes of predation, the effect of predation on species viability, and possible long-term solutions. In short, we must not convince ourselves that treating the symptom—rather than the cause—will solve the underlying problem. We need to know how much of a threat predation is, and we need to know what effect habitat conditions have on interactions.

I will conclude by commending the committee, especially Chairman HOLLINGS and Chairman KERRY, for their timely and judicious action in this matter. We live in a time where desperate measures appear to be needed; I sincerely hope we will see a day in the Pacific Northwest where we won't need to resort to killing seals and sea lions in order to preserve salmon.

Mr. PACKWOOD. Madam President, I rise today as a cosponsor of S. 1636, the Marine Mammal Protection Act Amendments of 1994.

This bill reflects a bipartisan effort and many months of discussions and drafting that included the Congress, the environmental and conservation groups, and the fishing industry.

All participants are to be praised for their achievement in crafting this very balanced bill that improves the program to reduce the incidental taking of marine mammals in the course of commercial fishing operations.

If this bill is not passed by Congress and signed by the President by April 1, the commercial fishing industry will simply come to a halt because the industry will have no exemption from its unavoidable interactions with marine mammals while fishing. The economic impacts would be dire for my State and for the Nation.

The bill also includes incidental take reduction plans for stocks in need. It takes into account the limited funding available by addressing those stocks in the greatest peril first.

Also, an excellent and realistic change has been made to address problems fishermen have had with the present cumbersome reporting system. The act now directs the reporting process to be done simply by a postage paid card or by computer within 48 hours, rather than requiring fishermen to keep logbooks throughout the season.

This is a difficult time for the fishing communities of my State of Oregon and the Pacific Northwest, Madam President, as once again, the chance of any commercial or recreational salmon fishing season this year looks bleak.

In many of these communities, people stand by and watch as factors beyond their control from El Nino to the growing seal and sea lion populations that feed on our salmon, lead to diminished salmon runs.

This bill will neither make those who think these pinniped populations are growing out of control completely happy nor those who seek to totally protect all marine mammals. What it is, through, is a fair balance that should serve both groups well.

Also, the Exon amendments to the act that I have cosponsored thoughtfully addresses the care and maintenance of marine mammals used for education and public display.

Again, this was done through many months of work by the Congress, the public display community, and some of the environmental and conservation groups, and also has bipartisan support.

I was pleased to receive word that our own Washington Park Zoo in Portland, one that Oregonians are justifiably proud of, has given the public display amendment its total support.

How many of us here on the Senate floor, as a fascinated kid, saw our first marine mammal at a zoo or aquarium; an experience that brought those magnificent creatures of the sea right before our very eyes.

The legislation before us reflects our respect and admiration for marine mammals and addresses the stability of our fishing communities and marine mammals in the wild. I ask for your support for its passage.

Mr. GORTON. Madam President, today the Senate considers a bill which is, in large part, the result of the collaborative efforts of various individuals and groups which have a vested interest in the reauthorization of this important act. These groups put aside their differences and worked hard to put together the bill which is before us today. The groups—the Center for Marine Conservation, Trout Unlimited, Northwest Indian Fisheries Commission, commercial and recreational fisheries organizations, and more—put forward a proposal to reauthorize the act which would allow economic and environmental interests to work together.

In addition,the groups recognized the very serious budget constraints which we are operating under, and have proposed a system to allocate Federal resources to those marine mammal stocks which are in the most serious need of recovery. I applaud the hard work which went into this process and only wish that more groups would be willing to iron out their differences to achieve a workable balance between economic and environmental concerns.

PINNIPED-FISHERY INTERACTION TASK FORCE

Included within S. 1636, is an amendment which I offered during the Commerce Committee markup of the legislation. This provision, entitled the "Pinniped-Fishery Interaction Task Force," was the result of negotiation and collaboration on behalf of various groups concerned with predation by "nuisance" animals.

The task force provision may appear as obscure to some, but in fact it addresses a decade-long problem in Washington State which has the potential to put two major environmental laws at odds with one another.

Briefly, the situation is this: Each year a wild run of steelhead salmon return to spawn at the Ballard Locks in Seattle, WA. Not coincidentally, 10 or so California sea lions have made the Ballard Locks their feeding ground for well over a decade. As a result of the incredible appetite of these sea lions, there has been a dramatic decline in a

run of wild steelhead salmon. Consequently, this fish run—a run which 10 years ago numbered nearly 2,000—today numbers less than 40.

In addition, a similar mammal-fishery interaction on the Columbia River is widely believed to have caused a decline in fish runs along the river. Although this case is not nearly as well documented as the Ballard Locks, it too deserve careful attention by fishery officials from the State and Federal level.

At the Ballard Locks, numerous nonlethal means of removal have been attempted by the Washington State Department of Wildlife, National Marine Fisheries Service, with assistance from the U.S. Fish and Wildlife. The non-lethal means of removal have ranged from underwater fireworks, underwater ultrasound, underwater lights, and physically transporting the nuisance sea lions back to California—only to have them return to the Locks a few short weeks later.

The task force provision would allow any person to apply to the Secretary to authorize the legal removal of identified nuisance animals. The application must include a means of identifying the individual mammal(s) as well as a detailed description of the problem interaction and the expected benefits of the removal.

The Secretary must review the application within 15 days upon receipt. If the application contains sufficient evidence, the Secretary would be authorized to establish a Task Force, and publish notice in the Federal Register requesting public comment on the application.

In making its recommendation, the task force will consider criteria such as: population trends; feeding habits; location of the interaction; time of occurrence of the interaction; number of animals involved; past efforts to nonlethally deter the animal(s); a demonstration that all reasonable nonlethal steps have been taken with no success; the extent of harm, impact or imbalance with other species in the ecosystem; and the extent of behavior that presents an ongoing threat to public safety.

The task force shall consist of Department of Commerce staff, scientist familiar with the fishery, representatives of interested conservation and fishing groups, tribes, State wildlife officials, and others.

Within 60 days of establishment of the task force, the task force would make a recommendation to the Secretary either approving or disapproving the application for removal of the nuisance animal. The recommendation would include: a description of the specific animal(s); proposed location, time and method of removal; criteria for evaluating the success of the removal; and the duration of the authority for removal. The task force may also suggest nonlethal alternatives.

After receiving the recommendation, the Secretary would have 30 days to either approve or deny the application. Upon approval, the Secretary would begin immediately to implement the lethal removal. The removal must be performed by a Federal or State agency, or a qualified individual under contract to a Federal or State agency.

As you can tell there are numerous opportunities for public comment and safeguards in this provision to ensure a careful and thoughtful deliberation of the request to lethally remove a nuisance animal.

Over the past several weeks, as many groups in the Pacific Northwest have written to me in support of the task force provision. I would like to read from a few of these letters for you.

The National Fisheries Institute calls the task force—

the best way to address each particular situation [of nuisance predation] in a professional and scientific manner. Everyone would have an opportunity to participate [in the process].

The Pacific States Marine Fisheries Commission, which represents the States of Washington, Oregon, and California, wrote and said:

We support your amendment to S. 1636 * * * PSMFC views that provision as a step toward achieving a balanced ecosystem management approach within the MMPA.

Trout Unlimited, which was one of the authors of the provision, states that,

As Congress and the Nation struggle to preserve our fish and wildlife resources, it appears to us that appropriate changes in the MMPA can help. In our view, your task force provision provides the best tool for this situation, and others like it which may arise in the future.

And the Pacific Fisheries Legislative Task Force, which is made up of members from California, Alaska, Hawaii, Idaho, Oregon, and Washington, wrote in support of my provision, stating,

Your [provision] will help control the exploding populations of California Sea lions and harbor seals, and will help us save our west coast fishery resources. Your amendment is a modest approach.

The Northwest Indian Fisheries Commission, another author of the provision, states:

This very narrow provision is necessary to protect other valuable main resources in the ecosystem, such as Pacific Salmon and Steelhead, from extraordinary predation by marine mammals. * * * This is common sense.

The Washington State Wildlife Commission wrote in support of the task force, stating:

The Commission believes that the proposed Pinniped-Fishery Interaction Task Force, with its well-balanced representation, will use sound judgment when recommending to the Secretary approval or denial of an application for lethal removal of problem marine mammals.

Rob Turner, director of the Washington State Department of Fish and Wildlife, wrote to tell me that,

I fully support this approach that will provide the Secretary of Commerce and the State of Washington with the flexibility that will help us to avoid future listings of settlehead and salmon stocks on our rivers.

The Mountaineers, a conservation group in Washington State which represents over 14,000 members, supports my provision.

The Sportfishing Alliance, which is a coalition of major Washington State county sportsman councils, and represents over 20,000 members, supports the task force provision.

The King County Outdoor Sports Council "strongly supports" the task force provision.

And I have received letters from concerned fishermen, like Thomas Wilken, of Port Orchard, WA, who wrote that,

I regret lethal removal of the sea lions but I feel it is necessary to protect the steelhead. After all other previous attempts to save the sea lions have failed, lethal removal is the only viable and economic solution to the problem.

And the Lake City Sportsmen's club wrote to tell me that,

The wild salmon and steelhead should not be allowed to become extinct. Control and management of sea lions and harbor seals is needed now to remove these predators from the locks, so the steelhead and wild salmon can return to their spawning streams.

I have even more letters of support which I could read from today, however, I believe I have established the wide support for my provision from groups throughout the Pacific Northwest.

At this time, however, I would like to further clarify my position on the issue of lethal removal. My task force provision does not, much to my regret, effectively address the sea lion predation problem on the Columbia River. The task force provision does not address how to manage robust populations of mammals, in large part because the provision was the result of negotiation and compromise. Unfortunately, I anticipate that a few years from now, I may be required to come before the committee once again to attempt to correct the situation on the Columbia River.

The Columbia River is, perhaps, an even more disturbing and potentially more difficult problem than that of the Ballard Locks. The Columbia River is home to one endangered fish stock, two threatened, and the potential listing of several more. Combined with the fact that, according to the recommendations of the recovery team assigned to exploring options for recovery of these stocks. California sea lions have appeared as far up river as the Bonneville Dam and Wilamette Falls. Since 1991, the report states, partial counts of the sea lions number 200. The harbor seal also consistently feeds upon fish along the Columbia River. If you read the task force provision included within the Senate bill, you quickly realize that this provision will do nothing to

correct the situation presented by the herds of hungry seals and sea lions on the Columbia River.

HOUSE OF REPRESENTATIVES

While I am pleased that the Senate will go on record as supporting the task force provision, I continue to be concerned with recent actions in the House of Representatives on this issue.

As I have outlined here today, the task force provision addresses an issue of concern to people in my State, and to an extent the Pacific Northwest. The situation which we face at the Ballard Locks is unique to Washington State, and in the opinion of this Senator, those individual, scientists, environmentalists, recreational and commercial fishing interests, and interested parties should be able to give their recommendation to the Secretary of Commerce on how to best solve it.

The House, in its bill to reauthorize the MMPA, has elected to tie the hands of Washington State by linking Secretarial authority to allow for the lethal removal of nuisance animals to the listing of the preyed-upon species under the Endangered Species Act. Mr. President, in doing this, the House of Representatives places itself in the ironic position of advocating for the listing of a species before allowing an act to save it. It is ironic, for this Senator, that under the guise of advocating for the preservation of a few marine mammals, proven to be a nuisance, that the House committee would advocate for an ESA listing of a wild run of steelhead salmon. This Senator does not pretend to have the answers to such difficult questions, but knows that the House provision will not solve the problem of nuisance mammals in the Northwest, but rather will create new ones.

I realize that my dissatisfaction with the House provision on nuisance animals will carry little weight with the members of that committee. I will fight hard during the House-Senate conference for the adoption of the Senate-approved provision because it reflects the input and views of Washington interests knowledgeable in this specific fishery-pinniped interaction.

Mr. LOTT. Madam President, I rise in support of the amendment offered by Senators EXON and DANFORTH.

Public display and scientific research institutions in Mississippi and throughout the United States play an essential role in marine mammal conservation. Over 100 million people annually visit such institutions and learn about the conservation of these magnificent creatures. The Marine Mammal Protection Act creates a special, favorable category for these activities, and it provides for simplified, nonburdensome procedures for them.

It is essential that permits continue to be granted for these beneficial purposes, and that they be granted on a timely and nonburdensome basis. This amendment accomplishes two important goals. First, it reaffirms the role of public display in increasing public awareness and understanding about marine mammals. Second, it simplified and clarifies the public display permitting process.

Madam President, I am pleased to cosponsor this amendment. It represents a carefully crafted compromise that his bipartisan support. It is identical to language added to companion legislation in the House of Representatives by the Merchant Marine and Fisheries Committee.

Mr. CHAFEE. Madam President, I would like to direct a question on S. 1636 to my distinguished colleague, Senator STEVENS. Section 4(f) of S. 1636 provides for the granting of permits under the Marine Mammal Protection Act for the incidental take of marine mammals that are designated as depleted because they are listed as endangered or threatened under the Endangered Species Act. My understanding is that this provision does not affect any requirements of the Endangered Species Act, including the requirements of section 7 of the Endangered Species Act. Is this correct?

Mr. STEVENS. The requirements of the Endangered Species Act, including section 7 requirements, are not affected by this bill.

Mr. BAUCUS. Madam President, I share the concerns of Senator CHAFEE regarding the Endangered Species Act, which is within the jurisdiction of the Environment and Public Works Committee. I ask the distinguished chairman of the Commerce Committee whether he agrees that nothing in S. 1636 alters or amends the Endangered Species Act.

Mr. HOLLINGS. Yes, I agree.

Mr. BAUCUS. I thank the Senator.

The ACTING PRESIDENT pro tempore. Are there further amendments to be proposed?

AMENDMENT NO. 1551

(Purpose: To provide procedures relating to permits for the public display of marine mammals)

Mr. JOHNSTON. Madam President, I send a further amendment to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] for Mr. EXON, for himself, Mr. DANFORTH, Mr. GRAHAM, Mr. INOUYE, Mr. MACK, Mrs. HUTCHISON, Mr. PACKWOOD, Mr. PRESSLER, Mr. COCHRAN, Mr. LOTT, Mr. GORTON, Mr. KERREY, Mr. DASCHLE, Mr. DECONCINI, Mr. SIMON, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, and Mr. D'AMATO, proposes an amendment numbered 1551.

Mr. JOHNSTON. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all on page 13, line 15, through page 15, line 19, and insert the following:

SEC. 5. PERMITS.

(a) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended—

(1) in paragraph (2)(B), by striking "for any purpose in any way connected with the taking or importation of" and inserting in lieu thereof "to take or import"; and

(2) by amending paragraph (4) to read as follows:

"(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

"(A) that is taken in violation of this Act; or

"(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under section 104(c); and".

(b) PERMITS.—Section 104(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(a)) is amended—

(A) by inserting ", harassment," immediately after "taking"; and

(B) by inserting "except for the incidental taking of marine mammals during the course of commercial fishing operations" immediately before the period at the end.

(2) Section 104(c)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(1) is amended by striking "and after" in the first sentence.

(3) Paragraph (2) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

"(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

"(ii) is registered or holds a license issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and

"(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

"(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

"(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

"(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

"(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

"(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

"(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any

additional permit or authorization under this Act. Such responsibilities shall—

"(i) for the purpose of public display, be limited to the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(ii) for the purpose of scientific research, be limited to the responsibility to meet the requirements of paragraph (3); and

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, be limited to the responsibility to meet the requirements of paragraph (4).

"(D) If the Secretary—

"(i) finds, in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (c), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

"(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammals, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

"(E) No marine mammal held pursuant to a permit issued under subparagraph (A) may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).".

(4) Paragraph (3) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(3)(A) A permit may be issued, for scientific research purposes that are likely to result in the taking or harassment of a marine mammal, to an applicant who submits information with the permit application indicating that the taking or harassment is required to further a bona fide scientific purpose. The Secretary is authorized to issue permits under this paragraph prior to the end of the mandatory public review and comment period if delaying the issuance of such permit could result in harm to a species, stock, or individual marine mammal, or result in loss of unique research opportunities.

"(B) No permit issued for purposes of scientific research under subparagraph (A) shall authorize the lethal taking of a marine mammal unless the applicant submits documentation to the Secretary that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

"(C) Not later than 60 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall grant a general authorization and shall issue implementing regulations allowing bona fide scientific research that is not likely to result in the taking or harassment of a marine mammal. Such authorization shall apply to persons who submit, at least 60 days prior to commencement of the research, a letter of intent to the Secretary specifying—

"(i) the species or stock of marine mammal on which the research will be conducted;

"(ii) the geographic location of the research;

"(iii) the period of time over which the research will be conducted;

"(iv) the purpose of the research, including a description of how the definition of bona fide research as established by the Secretary under this Act would apply; and

"(v) the methods used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary may notify the applicant that the proposed research is likely to result in the taking or harassment of a marine mammal, and that the provisions of subparagraph (A) apply. If no such notification is received, the proposed research shall be covered under the general authorization.".

(5) Section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended by adding at the end the following new paragraphs:

"(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

"(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

"(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

"(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

"(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

"(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

"(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

"(B)(i) A person which has possession of a marine mammal pursuant to a permit under paragraph (2), or a persons exercising rights under paragraph (2)(C), that gives birth to progeny shall—

"(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

"(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

"(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

"(C) Any progeny of a marine mammal born in captivity before the date of enactment of the Marine Mammal protection Act Amendments of 1994 and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

"(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

"(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2) and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information, which shall be provided by a person holding a marine mammal under this Act:

"(A) The name of the marine mammal or other identification.

"(B) The sex of the marine mammal.

"(C) The estimated or actual birth date of the marine mammal.

"(D) The date of acquisition or disposition of the marine mammal by the permit holder.

"(E) The source from whom the marine mammal was acquired, including the location of the take from the wild, if applicable.

"(F) If the marine mammal is transferred, the name of the recipient.

"(G) A notion if the animal was acquired as the result of a stranding.

"(H) The date of death of the marine mammal and the cause of death when determined.".

(c) EXISTING PERMITS.—Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act is hereby modified to be consistent with that section, as amended by this Act.

Mr. EXON. Madam President, I am pleased to file an amendment to the Marine Mammal Protection Act to improve the administration of the act as it relates to zoos, aquariums, and scientific research institutions. This amendment has broad bipartisan support from all regions of the country. It embraces a compromise worked out in the House of Representatives between those who display marine mammals, and the Clinton administration.

In 1992 alone, over 108 million people visited American zoos and aquariums. In fact, I can think of no better form of family entertainment and education. Research has also shown that wildlife public display programs are not only educational, they enhance public commitment to conservation.

In Nebraska, we are blessed with a number of premier zoos. The Henry Doorly Zoo in Omaha, the Riverside Zoo in Scottsbluff, and the Folsom's Children's Zoo in Lincoln, NE are nationally and internationally known. And the Henry Doorly Zoo will soon be the home of a world class aquarium.

America's public display institutions are playing an absolutely critical role in the conservation of marine mammals and endangered species. They have taken their responsibilities to the

public, their animals and future generations very seriously. Self regulation among America's zoos, aquariums, and marine parks significantly exceeds minimum Federal and State standards.

In recent months, the U.S. Department of Agriculture and the U.S. Department of Commerce have been engaged in a jurisdictional tussle, which, if unresolved threatens to significantly complicate zoo and aquarium operations. Unless the Congress acts, there will be confusion, duplication, and added expense for virtually all American zoos and aquariums.

This amendment, worked out between the public display community, the House Environment and Natural Resources Subcommittee and the Clinton administration takes a common sense approach and attempts to untangle a complicated knot of regulation and oversight.

The amendment will clarify the lines of responsibility, between the U.S. Department of Commerce and the U.S. Department of Agriculture, streamline the paperwork required when animals are transferred between exhibitors, improve the animal inventory system, maintain high standards for animal care and facilities and give Federal authorities the ability to act quickly to protect marine mammals when facilities and care fall below acceptable levels.

I encourage my colleagues to join in support for this common sense compromise. Thank you Madam President.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 1551) was agreed to.

Mr. JOHNSTON. Madam President, I move to reconsider the vote.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. If there are no further amendments to be proposed, the substitute amendment, as amended, is agreed to.

So the amendment (No. 1550), as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The bill is deemed read three times and passed.

So the bill (S. 1636) was deemed read three times and passed, as follows:

S. 1636

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Protection Act Amendments of 1994".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) authorize appropriations to carry out the Marine Mammal Protection Act of 1972 for the fiscal years 1994 through 1999;

(2) ensure that the incidental mortality and serious injury of marine mammals in commercial fisheries does not cause any species or stock of marine mammals to be reduced to or maintained at, for significant periods of time, a level that is below the lower limit of its optimum sustainable population range;

(3) prohibit intentional killing of marine mammals during commercial fishing;

(4) improve efforts to identify and address the most significant problems involving incidental mortality and serious injury of marine mammals in commercial fishing operations, considering the population size and status of the affected marine mammal stocks and the numbers of marine mammals that are incidentally killed or injured in commercial fisheries;

(5) ensure that the procedure for authorizing the incidental taking of marine mammals in commercial fisheries is consistent with the long-term objective of identifying and taking such steps as may be practicable to reduce incidental mortality and serious injury from commercial fishing operations to insignificant rates approaching zero; and

(6) continue cost-effective programs for reliably monitoring (A) the levels of incidental mortality and serious injury of marine mammals in commercial fisheries and (B) the size and current population trends of the affected marine mammal stocks.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—Section 7(a) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(a)), is amended to read as follows:

"(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972 (other than sections 117 and 118 of that Act), $12,138,000 for fiscal year 1994, $12,623,000 for fiscal year 1995, $13,128,000 for fiscal year 1996, $13,653,000 for fiscal year 1997, $14,200,000 for fiscal year 1998, and $14,768,000 for fiscal year 1999.

"(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118 of the Marine Mammal Protection Act of 1972, $15,000,000 for each of the fiscal years 1994 through 1999.".

(b) DEPARTMENT OF THE INTERIOR.—Section 7(b) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(b)), is amended to read as follows:

"(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, $9,900,000 for fiscal year 1998, and $10,296,000 for fiscal year 1999.".

(c) MARINE MAMMAL COMMISSION.—Section 7(c) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1407), is amended to read as follows:

"(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $1,350,000 for fiscal year 1994, $1,400,000 for fiscal year 1995, $1,450,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, $1,550,000 for fiscal year 1998, and $1,600,000 for fiscal year 1999.".

SEC. 4. MORATORIUM AND EXCEPTIONS.

(a) IN GENERAL.—In introductory matter of section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)) is amended—

(1) by inserting ", harassment," immediately before "and importation"; and

(2) by inserting "or harassment" immediately after "for the taking".

(b) PERMITS FOR RESEARCH, DISPLAY, ENHANCING SURVIVAL OR RECOVERY.—Section 101(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(1)) is amended to read as follows:

"(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for the taking, harassment, and importation of marine mammals for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock. Such permits may be issued if the taking, harassment, or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and the Committee shall recommend any proposed taking, harassment, or importation which is consistent with the purpose and policies of section 2. The Secretary shall, if the Secretary grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.".

(c) AUTHORIZATION FOR INCIDENTAL TAKING DURING COMMERCIAL FISHERIES.—The first sentence of section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended by inserting immediately before the period at the end the following: ", or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103.".

(d) TAKING OR IMPORTATION FROM DEPLETED STOCKS.—(1) Section 101(a)(3)(A) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A)) is amended by inserting ", except as provided in paragraph (6)," after "that" in the second proviso.

(2) Section 101(a)(3)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(B)) is amended by inserting ", or as provided for under paragraph (5) of this subsection," immediately after "subsection,".

(e) AUTHORIZATION FOR HARASSMENT OF SMALL NUMBERS OF MARINE MAMMALS.—Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)) is amended—

(1) in subparagraph (A), by inserting "or harassment" immediately after "taking" each place it appears; and

(2) by adding at the end the following new subparagraph:

"(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than one year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, harassment of small numbers of marine mammals of a spe-

cies or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

"(I) will have a negligible impact on such species or stock; and

"(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120.

"(ii) The authorization for such activity shall prescribe, where applicable—

"(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120;

"(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120; and

"(III) requirements pertaining to the monitoring and reporting of such taking, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120.

"(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

"(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) and (ii) are not being met.

"(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for harassment that occurs in compliance with such authorization.".

(f) PERMITS CONCERNING ENDANGERED OR THREATENED MARINE MAMMAL STOCKS.—Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)), as amended by this Act, is further amended by adding at the end the following new subparagraph:

"(E)(i) During any period of three consecutive years, the Secretary shall allow the incidental, but not the intentional, taking or harassment by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

"(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

"(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

"(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and an incidental take reduction plan has been developed or is being developed for such species or stock.

"(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

"(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

"(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being substantially complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a substantial change in the information or conditions used to determine such list.

"(v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.".

(g) IMPORTATION OF CERTAIN PRODUCTS.—Section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)) is amended by adding at the end the following new paragraph:

"(6)(A) A marine mammal product may be imported into the United States if the product—

"(i) was owned and exported by any person in conjunction with travel outside the United States;

"(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

"(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

"(B) For the purposes of this paragraph, the term—

"(i) 'Native inhabitant of Russia, Canada, or Greenland' means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

"(ii) 'cultural exchange' means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.".

(h) ACTIONS AFFECTING SECTION 101(b).—Section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)) is amended by adding at the end the following new sentence: "In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2), or in making any determination or finding under this Act that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.".

(i) TAKING IN DEFENSE OF SELF OR ANOTHER PERSON.—Section 101(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(c)) is amended to read as follows:

"(c) It shall not be a violation of this Act to take a marine mammal if—

"(1) such taking is imminently necessary in self-defense or to save the life of a person in immediate danger; and

"(2) such taking is reported to the Secretary within 48 hours and, whenever feasible, any carcass is made available to the Secretary intact.".

SEC. 5. PERMITS.

(a) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended—

(1) in paragraph (2)(B), by striking "for any purpose in any way connected with the taking or importation of" and inserting in lieu thereof "to take or import"; and

(2) by amending paragraph (4) to read as follows:

"(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

"(A) that is taken in violation of this Act; or

"(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under section 104(c); and".

(b) PERMITS.—(1) Section 104(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(a)) is amended—

(A) by inserting ", harassment," immediately after "taking"; and

(B) by inserting "except for the incidental taking of marine mammals during the course of commercial fishing operations" immediately before the period at the end.

(2) Section 104(c)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(1) is amended by striking "and after" in the first sentence.

(3) Paragraph (2) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

"(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

"(ii) is registered or holds a license issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and

"(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

"(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

"(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

"(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

"(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

"(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

"(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall—

"(i) for the purpose of public display, be limited to the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(ii) for the purpose of scientific research, be limited to the responsibility to meet the requirements of paragraph (3); and

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, be limited to the responsibility to meet the requirements of paragraph (4).

"(D) If the Secretary—

"(i) finds, in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

"(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

"(E) No marine mammal held pursuant to a permit issued under subparagraph (A) may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).".

(4) Paragraph (3) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(3)(A) A permit may be issued, for scientific research purposes that are likely to result in the taking or harassment of a marine mammal, to an applicant who submits information with the permit application indicating that the taking or harassment is required to further a bona fide scientific purpose. The Secretary is authorized to issue permits under this paragraph prior to the end of the mandatory public review and comment period if delaying the issuance of such permit could result in harm to a species, stock, or individual marine mammal, or result in loss of unique research opportunities.

"(B) No permit issued for purposes of scientific research under subparagraph (A) shall authorize the lethal taking of a marine mammal unless the applicant submits documentation to the Secretary that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

"(C) Not later than 60 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall grant a general authorization and shall issue implementing regulations allowing bona fide scientific research that is not likely to result in the taking or harassment of a marine mammal. Such authorization shall apply to persons who submit, at least 60 days prior to commencement of the research, a letter of intent to the Secretary specifying—

"(i) the species or stock of marine mammal on which the research will be conducted;

"(ii) the geographic location of the research;

"(iii) the period of time over which the research will be conducted;

"(iv) the purpose of the research, including a description of how the definition of bona fide research as established by the Secretary under this Act would apply; and

"(v) the methods used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary may notify the applicant that the proposed research is likely to result in the taking or harassment of a marine mammal, and that the provisions of subparagraph (A) apply. If no such notification is received, the proposed research shall be covered under the general authorization.".

(5) Section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended by adding at the end the following new paragraphs:

"(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

"(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

"(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

"(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

"(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

"(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

"(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

"(B)(i) A person which has possession of a marine mammal pursuant to a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), that gives birth to progeny shall—

"(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

"(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

"(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

"(C) Any progeny of a marine mammal born in captivity before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

"(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

"(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2) and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information, which shall be provided by a person holding a marine mammal under this Act:

"(A) The name of the marine mammal or other identification.

"(B) The sex of the marine mammal.

"(C) The estimated or actual birth date of the marine mammal.

"(D) The date of acquisition or disposition of the marine mammal by the permit holder.

"(E) The source from whom the marine mammal was acquired, including the location of the take from the wild, if applicable.

"(F) If the marine mammal is transferred, the name of the recipient.

"(G) A notation if the animal was acquired as the result of a stranding.

"(H) The date of death of the marine mammal and the cause of death when determined.".

(c) EXISTING PERMITS.—Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act is hereby modified to be consistent with that section, as amended by this Act.

SEC. 6. CONSERVATION PLANS.

Section 115(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383b(b)) is amended by adding at the end the following new paragraph:

"(4) If the Secretary determines that an incidental take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock specified under section 117(a)(7), or for stocks which interact with a commercial fishery for which the Secretary has made a determination under section 118(b)(1), any conservation plan prepared under this subsection for such stock shall incorporate the incidental take reduction plan required under section 118 for such stock.".

SEC. 7. STOCK ASSESSMENTS.

(a) IN GENERAL.—Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amended by adding at the end the following new section:

"SEC. 117. STOCK ASSESSMENTS.

"(a) IN GENERAL.—Not later than August 1, 1994, the Secretary shall, after consultation with the appropriate regional scientific working group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

"(1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

"(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

"(3) estimate the annual anthropogenic mortality and serious injury of the stock and, for a stock specified under paragraph (7), other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

"(4) describe commercial fisheries that interact with the stock, including—

"(A) the approximate number of vessels actively participating in each such fishery;

"(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

"(C) seasonal or area differences in such incidental mortality or serious injury; and

"(D) the rate, based on a unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;

"(5) categorize the status of the stock as one that either—

"(A) has a level of anthropogenic mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

"(B)(i) meets the criteria described under paragraph (7);

"(ii) is listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or designated as depleted under this Act; or

"(iii) meets the criteria specified in both clauses (i) and (ii);

"(6) estimate the calculated removal level for the stock, describing the information used to calculate it, including the recovery factor; and

"(7) specify whether the Secretary has reason to believe that the level of anthropogenic mortality and serious injury for the stock is such that it may cause the stock to be reduced or maintained below its optimum sustainable population.

"(b) PUBLIC COMMENT.—(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

"(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 101(b) applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 101(b).

"(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d), and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

"(A) the close of the public comment period on a draft stock assessment or revision thereof; or

"(B) final action on an agency proceeding pursuant to paragraph (2).

"(c) REVIEW AND REVISION.—(1) The Secretary, in consultation with the appropriate regional scientific review group established under subsection (d), shall review stock assessments under this section—

"(A) annually for stocks specified under subsection (a)(7) or for which substantial new information is available; and

"(B) at least once every 3 years for all other marine mammal stocks.

"(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

"(d) REGIONAL SCIENTIFIC REVIEW GROUPS.—(1) Not later than 60 days after the date of enactment of this section, the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, environmental and fishery groups, establish at least two independent regional scientific review groups consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b). The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific working group. The regional scientific review groups shall advise the Secretary on all aspects of the stock assessments required under this section.

"(2) The regional scientific review groups established under this section shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

"(3) Members of the regional scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of such regional scientific review groups.

"(4) The Secretary may appoint or reappoint individuals to the regional scientific working groups under paragraph (1) as needed.

"(e) EFFECT ON SECTION 101(b).—This section shall not affect or otherwise modify the provisions of section 101(b).".

SEC. 8. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

"(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this section, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

"(2) In the case of the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 101(a)(5)(E) of this Act shall apply.

"(3) Sections 104(h) and title III, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

"(4) This section shall not govern the taking of marine mammals from the California population of sea otters to which the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500) applies.

"(5) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

"(6) Except as provided in section 101(c)(2), the intentional killing of any marine mammal in the course of commercial fishing operations is prohibited.

"(b) INCIDENTAL TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement an incidental take reduction plan designed to assist in the recovery of each marine mammal stock that is specified under section 117(a)(7) which interacts with a commercial fishery listed under subsection (f)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine

mammal stocks which interact with a commercial fishery listed under subsection (f)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has an excessive rate of mortality and serious injury across a number of such marine mammal stocks.

"(2) If there is insufficient funding available to develop and implement an incidental take reduction plan for all such stocks that interact with commercial fisheries listed under subsection (f)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of incidental take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the calculated removal level, those that have a small population size, and those which are declining most rapidly.

"(3) Each incidental take reduction plan developed under this subsection for a stock shall include the following:

"(A) A review and evaluation of the information contained in the stock assessment published under section 117 and any substantial new information that may be available.

"(B) An evaluation and estimate of the total number and percentage of animals from the stock that are being killed or seriously injured each year as a result of commercial fishing activities.

"(C) Proposed management measures and voluntary actions for the reduction of incidental mortality and serious injury of marine mammals in commercial fisheries which interact with such stock.

"(D) A long-term strategy to reduce, to insignificant levels approaching a zero rate within 10 years, the incidental mortality and serious injury of marine mammals from the stock in the course of commercial fishing operations.

"(4)(A) Each incidental take reduction plan shall include projected dates for achieving the objectives of the plan.

"(B) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the calculated removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within 6 months after commencement of operations by commercial fisheries that interact with that stock, such mortality and serious injury to a level below the calculated removal level.

"(C) For any stock in which anthropogenic mortality and serious injury exceeds the calculated removal level, other than a stock to which subparagraph (B) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months after commencement of operations by commercial fisheries that interact with that stock, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term 'maximum extent practicable' means to the lowest level that is feasible for such fisheries within the 6-month period.

"(5)(A) At the earliest possible time (not later than 60 days) after the Secretary issues a final stock assessment for a stock specified under section 117(a)(7), the Secretary shall, and for stocks that interact with a fishery listed under subsection (f)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

"(i) establish an incidental take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and

"(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.

"(B) The Secretary may charge an incidental take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

"(C) Members of incidental take reduction teams shall be individuals knowledgeable and experienced regarding measures to conserve such stocks and to reduce incidental mortality and serious injury to such stock from commercial fishing operations. Members may include representatives of Federal and State agencies, Councils, interstate fishery commissions, academic and scientific organizations, environmental and fishery groups, Alaska Native organizations and Indian tribes, and others as the Secretary considers appropriate. Incidental take reduction teams shall include a representative of each affected Council and State, and shall, to the maximum extent practicable, include an equitable balance among representatives of government, resource user interests, and public interest groups. Incidental take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.) but their meetings shall be open to the public, after timely notice of the time and place of such meetings.

"(D) Members of incidental take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

"(6) Where the anthropogenic mortality and serious injury from a stock specified under section 117(a)(7) is estimated to be equal to or greater than the calculated removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (f)(1)(A) (i) or (ii), the following procedures shall apply in the development of the incidental take reduction plan for the stock:

"(A)(i) Not later than 6 months after the date of establishment of an incidental take reduction team for the stock, the team shall submit a draft incidental take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

"(ii) Such draft incidental take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

"(B)(i) The Secretary shall take the draft incidental take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

"(ii) In the event that the incidental take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed incidental take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

"(C) Not later than 90 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental take reduction plan and implementing regulations, consistent with the other provisions of this section.

"(D) the Secretary and the incidental take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final incidental take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

"(E) the Secretary shall amend the incidental take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

"(7) Where the anthropogenic mortality and serious injury from a stock specified under section 117(a)(7) is estimated to be less than the calculated removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (f)(1)(A) (i) or (ii), or for any marine mammal stocks which interact with a commercial fishery listed under subsection (f)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the incidental take reduction plan for such stock:

"(A)(i) Not later than 11 months after the date of establishment of an incidental take reduction team for the stock, the team shall submit a draft incidental take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

"(ii) Such draft incidental take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

"(B)(i) The Secretary shall take the draft incidental take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

"(ii) In the event that the incidental take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed incidental take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

"(C) Not later than 90 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental take reduction plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary and the incidental take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final incidental take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

"(E) The Secretary shall amend the incidental take reduction plan and implement-

ing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

"(8) In implementing an incidental take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement an incidental take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

"(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;

"(B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

"(C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and

"(D) monitor the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations, as set forth in subsection (d).

"(9)(A) Notwithstanding paragraph (5), in the case of any stock to which paragraph (5) applies for which a final stock assessment has not been published under section 117(b)(3) by April 1, 1995, due to a proceeding under section 117(b)(2), or any Federal court review of such proceeding, the Secretary shall establish an incidental take reduction team under paragraph (5) for such stock as if a final stock assessment had been published.

"(B) The draft stock assessment published for such stock under section 117(b)(1) shall be deemed the final stock assessment for purposes of preparing and implementing an incidental take reduction plan for such stock under this section.

"(C) Upon publication of a final stock assessment for such stock under section 117(b)(3) the Secretary shall immediately reconvene the incidental take reduction team for such stock for the purpose of amending the incidental take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (6)(E) or (7)(E), as appropriate.

"(D) A draft stock assessment may only be used as the basis for an incidental take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 117(a)(5)(A) and shall revoke any regulations to implement an incidental take reduction plan for such stock.

"(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

"(10) Incidental take reduction plans developed under this section for a species or stock listed as a threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act.

"(c) EMERGENCY REGULATIONS.—(1) If the Secretary finds that incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take action as follows:

"(A) In the case of a stock or species for which an approved incidental take reduction plan is in effect, the Secretary shall—

"(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce such incidental mortality and serious injury in that fishery; and

"(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the incidental take reduction team to address such adverse impact.

"(B) In the case of a stock or species for which an incidental take reduction plan is being developed, the Secretary shall—

"(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

"(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

"(C) In the case of a stock or species for which an incidental take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (f)(1)(A)(iii) which the Secretary believes may be contributing to such adverse impact, the Secretary shall—

"(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

"(ii) immediately review the stock assessment for such stock or species under section 117 and the classification of such commercial fishery under subsection (f)(1)(A) to determine if an incidental take reduction team should be established under this section; and

"(iii) may, where necessary to address such adverse impact, require the placement of observers pursuant to subsection (d) upon vessels in a commercial fishery listed under subsection (f)(1)(A)(iii), if the Secretary has reason to believe that such vessels may be causing incidental mortality and serious injury to marine mammals from such stock.

"(2) Prior to taking action under paragraph (1) (A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Councils, State fishery managers, and the appropriate incidental take reduction team (if established).

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for not more than 180 days, or until the end of the applicable commercial fishing season, whichever is earlier; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for the emergency regulations no longer exist.

"(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

"(d) MONITORING OF INCIDENTAL TAKES.—(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations for commercial fisheries listed under subsection (f)(1)(A) (i) or (ii). The purposes of the monitoring program shall be to—

"(A) obtain statistically reliable estimates of incidental mortality and serious injury;

"(B) determine the reliability of reports of incidental mortality and serious injury under subsection (g); and

"(C) report on the impacts of changes in commercial fishing methods or technology.

"(2) Pursuant to paragraph (1), the Secretary is authorized to place observers on board vessels as necessary, subject to the provisions of this section. Observers may perform other tasks including, but not limited to—

"(A) recording other sources of mortality;

"(B) recording the number of marine mammals sighted and the behavior of such mammals observed in the vicinity of commercial fishing gear;

"(C) other related scientific or fishery management observations; and

"(D) collection of marine mammals tissues, where such collection can be done safely and without interruption of commercial fishing operations.

"(3) When determining the distribution of observers among fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

"(A) the need to obtain the best scientific information available;

"(B) the requirement that assignment of observers be fair and equitable among fisheries and among vessels in a fishery;

"(C) the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

"(D) where practicable, the need to minimize costs and avoid duplication.

"(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

"(A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks designated as depleted on the basis of their listing as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

"(B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from stocks specified under section 117(a)(7).

"(C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

"(5) Notwithstanding paragraph (1), the Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of any marine mammals incidentally taken in the course of commercial fishing operations. The alternative program may include, but need not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

"(6) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a commercial fishery not listed under subsection (f)(1)(A) (i) or (ii).

"(7) The Secretary shall not be required to place an observer on a vessel in a commerical fishery if the Secretary finds that—

"(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

"(B) the facilities of a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

"(C) for reasons beyond the control of the Secretary, an observer is not available.

"(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—

"(A) to Federal employees whose duties require access to such information;

"(B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

"(C) when required by court order; or

"(D) in the case of scientific information involving fisheries, to employees of Councils who are responsible for fishery management plan development and monitoring.

"(9) The Secretary shall prescribe such procedures as may be necessary to preserve the confidentiality of proprietary information collected under this subsection, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

"(e) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 10 years after the date of enactment of this section.

"(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality rates.

"(3) Three years after such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which inadequate information exists on the level of incidental mortality and serious injury of marine mammals in the fishery.

"(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (b), and shall make recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on any legislative changes needed to achieve the goal specified in paragraph (1).

"(f) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of this section—

"(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114 (along with an explanation of such changes and a statement of the marine mammals and the approximate number of vessels or persons actively involved in each such fishery) that have—

"(i) frequent incidental mortality and serious injury of marine mammals;

"(ii) occasional incidental mortality and serious injury of marine mammals; or

"(iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

"(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

"(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

"(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A) (i) or (ii) upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

"(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

"(i) is a vessel of the United States; or

"(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

"(C) Except as provided in subsection (a), an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this Act applies.

"(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery—

"(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such registration is valid;

"(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

"(iii) report as required by subsection (g).

"(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A) (i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.

"(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A) (i) or (ii) who—

"(i) fails to obtain from the Secretary an authorization for such vessel under this section;

"(ii) fails to maintain a current and valid authorization for such vessel; or

"(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title. Such owner and master shall be subject to penalty under sections 105 and 107 for a violation of clause (i) or (ii), and shall be subject to a fine of not more than $100 for each offense for a violation of clause (iii).

"(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement an incidental take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

"(E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (g), instances of incidental mortality or injury of marine mammals in the course of that fishery.

"(4) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (g) and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 114 shall not bar the grant of an authorization under this section for an owner who complies with the requirements of this section. The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with regulations implementing an incidental take reduction plan or emergency regulations issued under this section.

"(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated,

to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

"(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

"(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

"(g) REPORTING REQUIREMENT.—The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

"(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

"(2) The name and address of the vessel owner or operator.

"(3) The name and description of the fishery.

"(4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

"(h) PENALTIES.—Except as provided in subsection (f), any person who violates this section shall be subject to the provisions of section 105 and 107, and may be subject to section 106 as the Secretary establishes by regulations.

"(i) VOLUNTARY MEASURES.—Nothing in this section shall be construed to limit the Secretary's authority to permit voluntary measures to be utilized in reducing the incidental taking of marine mammals in commercial fisheries.

"(j) CONSULTATION WITH SECRETARY OF THE INTERIOR.—The Secretary shall consult with the Secretary of the Interior on measures promulgated under this section which affect species or stocks under such Secretary's jurisdiction.".

SEC. 9. PENALTIES; PROHIBITIONS.

(a) CIVIL PENALTIES.—Section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) is amended by inserting ", except as provided in section 118," immediately after "thereunder" and by inserting ", harassment," immediately after "taking".

(b) CRIMINAL PENALTIES.—Section 105(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(b)) is amended by inserting "(except as provided in section 118)" immediately after "thereunder".

(c) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended by striking "and 114 of this title or title III" and inserting in lieu thereof "114, and 118 of this title and title IV".

SEC. 10. AUTHORIZATION TO DETER MARINE MAMMALS NONLETHALLY.

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:

"(d)(1) Except as provided in paragraph (2), the provisions of this Act shall not apply to the use of measures—

"(A) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

"(B) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

"(C) by any person, to deter a marine mammal from endangering personal safety; or

"(D) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of the marine mammal.

"(2) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals designated as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Secretary shall recommend specific measures which may be used to nonlethally deter such marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

"(3) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

"(4) The authority to deter marine mammals pursuant to paragraph (1) applies to all marine mammals, including all stocks designated as depleted under this Act.".

SEC. 11. INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE.

Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act—

(1) alters or is intended to alter any treaty between the United States and one or more Indian tribes; or

(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(h) of this Act.

SEC. 12. TRANSITION RULE; IMPLEMENTING REGULATIONS.

(a) TRANSITION RULE.—Section 114(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by striking "ending April 1, 1994," and inserting in lieu thereof "until superseded by regulations prescribed under section 118, or until December 31, 1996, whichever is earlier,".

(b) IMPLEMENTING REGULATIONS.—Except as provided otherwise in this Act, or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regulations to implement this Act and the amendments made by this Act within 270 days after the date of enactment of this Act.

SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended—

(1) by striking paragraph (17);

(2) by redesignating the second paragraph (15) and paragraph (16) as paragraphs (16) and (17), respectively; and

(3) in paragraph (12)(B), by striking "in title III" and inserting in lieu thereof "In section 118 and in title IV".

(b) MARINE MAMMAL HEALTH AND STRANDING RESPONSE.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended—

(1) by redesignating title III, as added by Public Law 102-587 (106 Stat. 5060), as title IV; and

(2) by redesignating the sections of that title (16 U.S.C. 1421 through 1421h) as sections 401 through 409, respectively.

(c) UNUSUAL MORTALITY EVENT FUND.—Section 405(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1421d(a)), as so redesignated by subsection (b)(2) of this section, is amended by striking "a fund" and inserting in lieu thereof "an interest bearing fund".

SEC. 14. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362), as amended by this Act, is further amended—

(1) in paragraph (12), as redesignated by section 15 of this Act, by striking "harass," each place it appears; and

(2) by adding at the end the following new paragraphs:

"(18) The term 'calculated removal level' for a marine mammal stock is the product of the following factors:

"(A) the minimum population estimate of the stock;

"(B) one-half the maximum theoretical or estimated net productivity rate for the stock at a small population size; and

"(C) if the stock is specified under section 117(a)(7), listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or designated as depleted under this Act, a recovery factor that is no greater than 1.0 to ensure that the stock will recover to its optimum sustainable population.

The recovery factor under subparagraph (C) shall not be less than 0.1 for an endangered stock, shall not be less than 0.3 for a threatened or depleted stock, and shall not be less than 0.5 for any other stock.

"(19) The term 'Council' means any Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852).

"(20) The term 'harassment' means any act of approach, pursuit, torment, or annoyance which—

"(A) has the potential to harm a marine mammal in the wild; or

"(B) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to migration, respiration, nursing, breeding, feeding, and sheltering.

"(21) The term 'incidental take reduction plan' means a plan developed under section 118.

"(22) The term 'incidental take reduction team' means a team established under section 118.

"(23) The term 'net productivity rate' means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

"(24) The term 'minimum population estimate' means an estimate of the number of animals in a stock that—

"(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

"(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.".

SEC. 15. HUMAN ACTIVITIES WITHIN PROXIMITY OF WHALES.

(a) LAWFUL APPROACHES.—In waters of the United States surrounding the State of Hawaii, it is lawful for a person subject to the jurisdiction of the United States to approach, by any means other than an aircraft, no closer than 100 yards to a humpback whale or any other whale, regardless of whether the approach is made in waters designated under section 222.31 of title 50, Code of Federal Regulations, as cow/calf waters.

(b) TERMINATION OF LEGAL EFFECT OF CERTAIN REGULATIONS.—Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.

SEC. 16. PINNIPED-FISHERY INTERACTION TASK FORCE.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 119. PINNIPED-FISHERY INTERACTION TASK FORCE.

"(a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provision of this title, the Secretary may permit the lethal removal of pinnipeds in accordance with this section.

"(b) APPLICATION.—Any person may apply to the Secretary to authorize the lethal removal of pinnipeds identified as habitually exhibiting dangerous or damaging behavior that cannot otherwise be deterred. Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the removal.

"(c) ACTIONS IN RESPONSE TO APPLICATION.—(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines that such sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

"(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

"(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice, the Pinniped-Fishery Interaction Task Force shall—

"(A) recommend to the Secretary whether to approve or deny the proposed lethal removal of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of removal, criteria for evaluating the success of the action, and the duration of the authority; and

"(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

"(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the lethal removal, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

"(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted lethal removal or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

"(d) CONSIDERATIONS.—In considering whether an application should be approved or denied, the Task Force and the Secretary shall consider—

"(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

"(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

"(3) the extent to which such pinnipeds are causing undue harm, impact, or imbalance with other species in the ecosystem, including fish populations; and

"(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

"(e) LIMITATION.—The Secretary shall not approve lethal removal for any pinniped from a species or stock that is—

"(1) listed as threatened or endangered under the Endangered Species Act of 1973;

"(2) designated as depleted under this Act; or

"(3) specified under section 117(a)(7) of this Act.

"(f) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—(1)(A) The Secretary shall conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In carrying out the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

"(i) fish behavior in the presence of predators generally;

"(ii) holding times and passage rates of anadromous fish stocks in areas where such anadromous fish are vulnerable to predation;

"(iii) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

"(iv) other issues the Secretary considers relevant.

"(B) Subject to the availability of appropriations, the Secretary shall, not later than 18 months after the date of enactment of this section, transmit a report on the results of the study required by this paragraph to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(C) There are authorized to be appropriated to the Secretary $700,000 for the purpose of carrying out the study required by this paragraph.

"(2) The study conducted under this subsection shall not be considered relevant in any determination under subsection (c), nor reviewed by any task force in connection with considerations under subsection (d), until such study is completed, and may not be used by the Secretary as a reason for delaying or deferring a determination under subsection (C).".

SEC. 17. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 120. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

"(a) IN GENERAL.—The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

"(b) GRANTS.—Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

"(1) collecting and analyzing data on marine mammal populations;

"(2) monitoring the harvest of marine mammals for subsistence use;

"(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

"(4) developing marine mammal co-management structures with Federal and State agencies.

"(c) EFFECT OF JURISDICTION.—Nothing in this section is intended or shall be construed—

"(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

"(2) as altering in any respect the existing political or legal status or Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

"(1) $1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

"(2) $1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 7 of the Act entitled 'An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes', approved October 9, 1981 (16 U.S.C. 1384).".

SEC. 18. BERING SEA MARINE ECOSYSTEM PROTECTION.

Section 110 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1380) is amended by striking subsection (c) and inserting in lieu thereof the following:

"(c)(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, Alaska Native organizations, and fishery and environmental groups, shall, not

later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity of such uses.

"(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

"(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204.".

SEC. 19. INTERJURISDICTIONAL FISHERIES ACT OF 1986.

Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended by striking "$2,500,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995" and inserting in lieu thereof "$65,000,000 for each of the fiscal years 1994 and 1995".

SEC. 20. COASTAL ECOSYSTEM HEALTH.

(a) REQUIREMENT TO CONVEY.—Not later than September 30, 1994, the Secretary of the Navy shall convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the northwest side of Pier R, and the fenceline between the buildings knows as RTC–1 and 200. Such property shall include Pier R, the buildings known as RTC–1 and RTC–4, and all walkways and parking areas associated with such buildings and Pier R.

(b) SURVEY; EFFECT ON LIABILITY OF SECRETARY OF THE NAVY.—The acreage and legal description of the property to be conveyed pursuant to this section shall be determined by a survey approved by the Secretary of the Navy. Such conveyance shall not release the Secretary of the Navy from any liability arising prior to, during, or after such conveyance as a result of the ownership or occupation of the property by the United States Navy.

(c) USE BY NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The property conveyed pursuant to this section shall be used by the Secretary of Commerce in support of the operations of the National Oceanic and Atmospheric Administration.

(d) REVERSION RIGHTS.—Conveyance of the property pursuant to this section shall be subject to the condition that all right, title, and interest in and to the property so conveyed shall immediately be conveyed to the public entity vested with ownership of the remainder of the Charleston Naval Base, if and when—

(1) continued ownership and occupation of the property by the National Oceanic and Atmospheric Administration no longer is compatible with the comprehensive plan for reuse of the Charleston Naval Base developed by the community reuse committee and approved by the Secretary of the Navy; and

(2) such public entity provides for relocation of the programs and personnel of the National Oceanic and Atmospheric Administration occupying such property, at no further cost to the United States Government, to comparable facility, including adjacent waterfront and pier, within the Charleston area.

Mr. JOHNSTON. Madam President, I move to reconsider the vote.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1994

The Senate continued with the consideration of the bill.

Mr. JOHNSTON. Madam President, I ask unanimous consent that we resume consideration of S. 208.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. WALLOP. Madam President, I ask unanimous consent that Jim Beirne, Jim O'Toole, Jim Tate, Kelly Fischer, Carol Craft, Gerry Hardy, and Camille Heninger of the Senate minority staff be permitted the privileges of the floor during the pendency of S. 208.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Louisiana.

Mr. JOHNSTON. Madam President, S. 208 as reported from the Energy and Natural Resources Committee would reform the process by which the National Park Service awards contracts to private persons or corporations who seek to do business inside our national parks. The legislation has been before our committee in one form or another for many, many years. It has been the subject of numerous hearings, some as early as 1979, and has been considered at several committee business meetings. Throughout this process, under the leadership of the Senator from Arkansas, Mr. [BUMPERS], who is the chairman of the Subcommittee on Public Lands, National Parks and Forests, we have crafted a very reasonable and progressive bill. This measure is a bipartisan measure. It was ordered reported by the committee by a vote of 16 to 4.

Our colleague from Utah, Senator BENNETT, worked very closely with Senator BUMPERS to craft the compromise bill before us today. In fact, Senator BENNETT, who is one of the renowned businessmen of this body, put a businessman's approach to the matter of concessions in national parks, and I think our result is one that utilizes the best of business principles, that is competition, so that the park concessions will be awarded to the very best of the applicants.

Madam President, under today's law before this bill is enacted we do not have a competitive situation in our national parks. To the contrary, those that have the concessions are almost guaranteed that they will get a renewal of that contract. That is so because of two features of the present law. The first is what we call the possessory interest so that all of the improvements that are made in a national park are, in effect, the property of the concessioner so that when it comes time to renew the contract, anyone who wishes to compete must pay the full or "sound" value, what in effect is the fair market value, for all of the improvements made at that national park. Improvements at our big national parks total hundreds of millions of dollars. In effect, if you build a hotel at a national park, then there is no depreciation of that asset. Rather the concessioner gets to keep the assets, and at the termination of the contract anyone who wishes to bid for that new contract must pay the full nondepreciated value of that asset.

The second basis on which it is almost impossible to compete is that concessioners get a preferential right to renew. That means that if someone goes to all of the expense, trouble, difficulty and time of putting together a bid for a concession, then the existing concessioner has the right to come in and equal or exceed that bid.

So, on that basis, no one is going to go through the trouble and expense to make the bid and, indeed, have to put up all the money for the assets and then find that he or she is unable to get the contract because the existing concessioner equals the bid that they made.

So what we have done, Madam President, is provide for a competitive selection process. It prohibits the preferential right of renewal unless the contract is less than $500,000. In those very small contracts, the Park Service is permitted to go ahead with the preferential right of renewal. In all others, it must be done on a competitive basis.

With respect to the possessory interest, those who have assets, concessioners who have these assets at the present time, will be able to keep those assets. So, if an existing concessioner wishes to, or is not successful in getting a renewal of the contract, then the person who gets the contract would have to pay him the full possessory interest, the full fair value of those assets. However, if the concessioner is able to get a renewal of the contract, then he must begin to depreciate that asset on the basis of the number of years provided by the Internal Revenue Code, which, in today's code, would provide for 39 years.

So, Madam President, what we have here is a bill that will ensure that national park concessions are managed not only in the interest of the taxpayers, so as to maximize the return to the taxpayer, but so that we will be

able to get the best concessioner, the one who competitively is able to bid for the contract.

I think, Madam President, what we have in this bill is national park policy which is realistic and combines the very best of park policy with the best of business policy.

For that reason, Madam President, this bipartisan measure was, as I mentioned earlier, passed out of committee by a vote of 16 to 4.

Madam President, the instant bill before us really is a tribute to Senators BUMPERS and BENNETT, who worked this bill out. They worked out complicated, difficult and, I might say, controversial provisions of this bill. In doing so, it was able to garner the overwhelming support of the Senate Energy Committee. Both of those Senators have my congratulations for an excellent job done in putting together a difficult bill.

I yield the floor.

Mr. WALLOP addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. WALLOP. Madam President, I am sure it is a very rare occasion upon which I would disagree with the business judgment or the political judgment of my friend from Utah, Senator BENNETT. And rarely have I been on the other side of a bill that the committee has brought to the floor from the Senator from Louisiana. In fact, the two of us, I still believe, passed the only really major piece of legislation in the last Congress, the national energy strategy.

Madam President, I find, from talking to colleagues, the first thing everybody wonders is, what is all the fuss about? I mean, who can be worrying about a couple of hot dog stands? That is what the concessions are. They do not know, the average person in this body does not have a clue, what we are talking about. And possessory interest puts them straight to sleep. It is a word not often used in the rest of business.

But, it is important I think to realize what the concessions are. They are the hotels, they are the dude ranches, they are the rafting operations, they are the gasoline and convenience stores, they are riding, guiding, sight-seeing operations, depending on the nature of the park; they are the bus systems, they are boating opportunities, they are what America has asked the private sector to do for it.

The Senator from Louisiana said, quite correctly, that these assets run to hundreds of millions of dollars. Madam President, that is precisely correct, and the taxpayer did not pay a dime for it. Nor would the taxpayer have paid a dime for it; not even during the plush times of absolute abandon on deficits and Government spending, would we have ever funded what the private sector has funded.

That, Madam President, was the whole point when Congress passed Concessions Policy Act of 1965. We intended, on purpose, to discourage the turnover of concession operations.

As a matter of Federal policy—and a darn good one it has been, too—we decided that the private sector should be encouraged to provide the visitor services. They would be regulated and they would be allowed to make a reasonable profit. In exchange, they, and not the Federal Government and not the taxpayers of America, would be required to raise the capital to construct and maintain facilities to standards set by the Federal Government.

Continuity of good services at reasonable rates to our park visitors was judged to be more important than the collection of receipts. That was at a time when the national parks were to be considered public treasures for the benefit of the public. That was before reinventing Government tried to turn them into cash registers for the Federal Government.

Madam President, I will talk for a minute about the right of possessory interest and the preferential right of renewal, along with the ability to award long-term contracts. These were all included in the Concessions Policy Act to provide the contractor with the necessary collateral to take to a lending institution—a bank or whatever; investors, even—so that moneys could be borrowed to fund park improvements for the visitor.

We have gotten off on the idea, somehow or another, that these were processes for the concessionaires. The Congress made a specific decision—and a wise one it has been—that these moneys would be invested for the pleasure of the visiting public, the convenience of and the safety of. And this was consistent with our view that these types of improvements and services should be furnished by the private sector and not the taxpayer.

The success of the program in concessions is obvious, if you look at the privately operated visitor facilities in America's national parks today. Under no set of circumstances—I defy anybody in either body to tell me that they believe that the Federal Government would have developed, would have constructed, and would have maintained the hundreds of visitor facilities throughout the park system without this private sector involvement and, more importantly, without making major trips to the Federal Treasury for buckets of money.

Has it been entirely, 100 percent perfect? Of course it has not. But I will tell the Senate this: it has been more successful than darn near any Federal program that anybody can point out to me. And we are on the threshold of toying with it for a new idea.

The situation in the parks has not changed and, in fact, has become gravely worse, given the budget constraints and our unending appetite to add more parks.

One of the things we are about to do is add another park in California called East Mojave. This, after having accepted the Presidio, which is going to cost us more than Yellowstone, more than even Yosemite, and more than most of the rest of the parks in the system combined. But we are not going to add any more personnel and we are not going to add any more money. And guess what is going to happen?

The Secretary has already taken 400 people out of the National Park System and put 301 of them in his office. And we are sitting around here taking the one thing that works, and my guarantee is that it will add somewhere between $150 and $200 million a year out of a budget of $1 billion to the National Park System's problems.

These facilities that exist in our parks are, by and large, wonderful. There are facilities that still need to be developed, and there are some that need to be replaced and some that need to be maintained. It is unfortunate that the very fundamental building blocks of the successful and cost-effective program have been undermined and eliminated by the legislation reported by our committee. It is unfortunate the Appropriations Committee does not understand the magnitude of the expenses they will bear if this legislation is to pass.

Let there be no misunderstanding; the parks will receive their money, although not all they need. Other programs will suffer as well.

While I understand and do not quarrel with the proponents of this legislation, who believe their efforts will result in increased competition and revenue, it is my belief that, as reported, this legislation will exact an enormous price from the taxpayers, and worse still, will result in a degradation to the National Park System and a very specific degradation to the services provided to the visitors of the National Park System.

The Senator from Louisiana said, "It is going to maximize the return to the taxpayer. It gets you the very best franchisee." Madam President, the very best franchisee has nothing to do with this. It will get you the cheapest franchisee—who may or may not be a good franchisee—but he will darned sure be the cheapest. His effort to try to maximize the return of the investment that he is about to make will result either in lower fees from the National Park Service charged to the franchisee, or higher costs to the visitors. That is what this will get you.

Under current law and under current practice, concessionaires are encouraged to make investments to the infrastructure to accommodate park visitors, and so they should. They obtain their own capital and comply with all Federal requirements. Title to all the facilities resides with the United States, and that is wherein this crazy

word "possessory interest" comes, because while there the title resides, the franchisee, if he is to lose that for reasons of malperformance or other reasons, then the Park Service and the Government owes him the fair market value of those improvements.

Possessory interest is calculated as to the sound value of those improvements, and that possessory interest has to be either acquired by the Government or a new concessionaire if the current one does not obtain a renewal of his contract. That is the basis upon which people can go to borrow money. There is nothing strange in the business world about that. The guy goes to the bank. He says, "Here is what my interest is. Here is what you can get from me should I collapse and fail. This is the reason I am able to come to you, Mr. Banker, and borrow money."

The new concessionaire is going to say, "I have a contract from the United States Government. That guarantees me at the end of time I get half the value, a depreciated half of this thing. But I have no possessory interest in it. It is declining."

These changes will simply have to be reflected, and I am certain my colleague from Utah, as a businessman, will understand that. They have to be reflected. Nobody is going to absorb them by ignoring them. So it certainly eliminates the collateral basis upon which to finance improvements. My concern is the practical effect of failing to grandfather those existing possessory interests.

The legislation as reported applies a schedule to reduce the value of any existing possessory interest if the present contract is renewed. That is a cute theory, but let us examine the implications of that in practice, in the actual business world in which these people are going to have to operate. Assume for the sake of argument this is an existing concessionaire who has invested in a modest facility which provides limited accommodations, meals, supplies, and fuel for visitors in a park with a very limited season. Not all our parks have the 12-month season of the parks in the chairman's State, or in Florida, California, or Arizona. A lot of them, as in my State and Alaska and the State of the Senator from Utah, have a limited season. The money they make, the return on their investment, has to be made in 4 months, 5 months—certainly not 12.

The possessory interest that exists today, of a concession the likes of which I described, could be in the neighborhood of $5 million, based on sound market value. The contract is coming up now for renewal. Let us assume the new contract will be for 10 years with a 20-year devaluation schedule. A concessionaire, who is the investor today, is faced with a choice. Should the concessionaire renew, he will directly forfeit approximately $2.5 million over the life of the contract under this legislation. So now he either makes that up in higher charges or gets it back from the Park Service in lower franchise fees, or he will simply leave and ask for his $5 million for some other enterprise. These people are not fools. They have a great affection for the national parks and they have a great affection for the jobs they do. But they are not fools and $5 million is better than $2.5 million. The latter is the more likely scenario.

That possibility is even more likely if you consider the time value of the funds. If the concessionaire stays, the $5 million interest will be reduced to $2.5 million under the terms contained in this bill. If he were to take the $5 million and invest it at 7 percent over the same period, it would be worth $10 million. Do we really expect people to forgo $7.5 million for the privilege of being abused by the Department of Interior?

There are family operations where the possessory interest represents a large portion of their estate, and keep in mind that a lot of these concessions about which we are talking are family operations. The former Director of the Fish and Wildlife Service, Mr. John Turner, his family has been operating in Grand Teton National Park since before it was a national park. So these are a portion of an estate.

What responsible family is going to leave their estate to be divided in half by the Federal Government? Sadly and reluctantly, they will leave, the people who have been providing this kind of service to visitors to the National Park System. And you are telling me that you are going to get a better concessionaire than people who have been able to stay in business for 75 years as a family? They have been able to stay because they have been good, because they have run good businesses, because people like to come and have the guided nature tours, and to ride the horses that they have, and to go on the pack outfitting trips and run the river. They have been good for all this time. But this is their family's estate and they dare not leave it on the table; they just dare not.

So assuming the existing concessionaire does what is likely, who gets to pick up the tab? Under current law, it would be the new concessionaire, who would then hold a possessory interest and, in fact, would use the possessory interest as collateral for the loan to pay off the existing concessionaire.

However, under the legislation in front of us, any new concessionaire is faced with the same prospect of paying $5 million and watching that investment dwindle to $2.5 million over the contract term.

Again, Madam President, these people are not fools, either the ones that are there or the ones that will be coming in. That investment will have to be recouped in higher charges to the national park visitor or lower fees from the National Park Service. Somewhere or another, it is not going to come just out of the tax advantages of being able to depreciate property. It will not.

The statute that sits in front of us eliminates the value of the purchased interest as collateral. I do not know why that is hard to see. I really do not know why it is hard to see. These operations are not such gold mines in their entirety—there may be one or two—but in their entirety, they are small businesses yielding very little return. They are yielding livings to mom-and-pop operations. They are yielding the ability to create small estates, like the rest of America's businessmen and women have.

The most likely result is that all the parties are simply going to let the Federal Government buy out the existing concessionaire and then bid on contracts without any possessory interest. That contract is not going to be of the same value. No businessman around is going to do it. The Park Service is going to hold an item that it has paid for with taxpayers' money that immediately has a diminished value as a consequence of the passage of this bill. Why is that hard to understand?

It accomplishes the goal of the legislation, gets it out of the hands of the existing concessionaire, and it gets people to bid for it. It gets them to bid, I will grant you that. But it does so at the expense of a beleaguered national park system, and out of the limited funds available to the Appropriations Committee and ultimately out of the ability of the National Park System to take care of the national parks under its control.

The entire budget for the National Park Service in 1994 is just over $1 billion. A lot of us are, with good reason, concerned about the present level of park maintenance and, even more so, Madam President, about the backlog in land acquisition. We should be concerned when 20 percent of the Park Service budget or 15 percent over the next 10 years goes to paying off possessory interest when we have taken the property of Americans and refuse to pay for them.

A lot of Americans do not realize that this Congress annually authorizes new parks, many of which have private property holdings. Congress has the biggest appetite in the world for parks. We use it to run for reelection. We use it to say great things about America. But, Madam President, we have absolutely no stomach in the world for paying for it. In the Chair's own State, in California, in Wyoming, in Indiana, in Utah and Florida, in virtually every State, there are Americans whose property has been declared national parks for which we have not paid.

Now all of a sudden we are going to put concessionaires at the front of the

line and virtually force them into the decision of saying, yes, pay for these. A, it is not right; B, it is bad business; and C, it further diminishes the capacity of the National Park System to pursue its mission. We are not going to add any more money to it. We absolutely are not. And we are already taking personnel away from it while adding more parks to it.

There is something really silly about this operation, and I do not know how to get the attention of the Senate to say how absolutely silly it is. We have all the right words and all the right names: Competition; revenues to the Treasury; it will pay us more. But an examination of this bill shows us the opposite.

There is fundamentally something wrong with this picture. On the one hand, we, as the Congress, and this administration, are advocating private ownership of lands and facilities within the former Soviet Union. On the other, we now seem to be striving to get more Government ownership of the private facilities which occupy our Federal lands.

The cost to purchase existing possessory interests will be expensive—as the Senator from Louisiana mentioned the values of them—and it is unnecessary and it is counterproductive. The appropriators ought to be paying attention. Somebody is going to have to pay. It is not going to come for nothing. It will not be the new concessionaire. It will be the taxpayer and a system that is underfunded and under siege.

The legislation will do enormous harm to a system that has served very successfully, very handsomely the parks' visitor for over three-quarters of a century. Visitors who have become accustomed to a high quality of service may some day ask us: "What happened? Why did you do it?"

We are not even going to try this thing before we put it in play; we are just going to do it.

In the interim, revenues to the Treasury almost certainly will be decreased. Services in our parks will become too expensive for the average visitor to afford. Maybe that is the way we can limit the visitors to America's national parks, by making them just the playgrounds of the upper-middle class and the rich—no longer the playgrounds of the great touring American.

The process of using concessions must go up. Somebody has to pay and it is going to be the visitor or it is going to be the Treasury, and we do not have it in the Treasury and we are not going to let the parks disappear. The private facilities will either begin to degrade or eventually be owned by the Government and then they will degrade, if history is any judge, and at some point in time, it is going to cost fortunes to rehabilitate what we have allowed to be destroyed.

Guess how we are going to do it? We are going to go back to the system that we have today which grants a possessory interest so that people can get the capital to do it. That is the only way it is going to be. I promise you that nobody in Congress is going to give you money to rebuild the Lake Hotel in Yellowstone or any of the other wonderful facilities that exist. Congress is not going to do that.

I really appreciate the efforts of the colleagues who have attempted to reform the Concessions Policy Act. I do not charge them with acting in bad faith. Far from it. I honestly believe that they think that this is going to be better than the system that exists. I thoroughly and I completely disagree. I have grown up in national parks. I have had friends and family who have worked in the national parks. I know what these things are about.

If enacted, this legislation will produce practically no additional revenue if it works perfectly. And guess what? The revenue is not going to go to the national parks. The revenue, whatever little there is, is going to go to the Treasury. We tried. Senator JOHNSTON and I and others worked very hard to get the entrance fees raised so that: First, they were worth collecting; and, second, that they could stay in the parks, but they were raised. It was no sooner passed and all that Americans got out of it was higher entrance fees. They sure did not get an improvement in trails or improvement in visitor facilities or sure did not get an increased number of America's acres that have been confiscated and paid for. Nothing happened good to the parks out of raising the fees, and we all tried very hard to see to it that that was the specific result of it.

I have long advocated that concessions should be paying higher franchise fees. Madam President, that is not the fault of the system. That is the fault of the business managers of the National Park Service, and that can be changed. If people really want to put these things on a more business-like basis, all they have to do is write a better contract.

Some of the contracts that have been written by the system are a joke, but that is not the fault of the act. That is the fault of incompetence in governing, and incompetence in governing is not a franchise of either party. It is the mark of both parties. It is the mark of Government. But you can do better, and there is no reason to tear down a system that has provided excellence from one end to the other in order to do better.

To think differently is basically to think and to subscribe to the administration's views that this great national park system is for amusements to be run for money and not for the purpose of setting them aside to preserve them and protect them for the future and provide for the current enjoyment of Americans. That is why they were put together. They are not to be a coin machine for the Treasury, especially when the Treasury refuses through the offices of the Congress to provide the money to run those parks well, and now we are going to take on the additional load of buying concessions and operating them until we get new concessionaires?

It is a joke, Madam President. The current system is the best example I know of how a private/public partnership should work. It provided millions and millions and millions of dollars in vital infrastructure and services to the visitors to the parks all at no cost to the taxpayers and all with the result of good, solid facilities for America's parks visitors to enjoy when they are in the parks.

The committee chose to change the conditions of the right to possessory interest and in so doing, in my judgment, will initiate the biggest buyout that the Park Service has ever had. Existing concession operators will have no alternative but to leave their businesses on termination date unless they are very, very big and they can write these things off in other ways.

What you may see is just a swap of ownership; that which TW Services now owns will go to the market and ARA will buy it, and that which ARA now owns TW Services will buy, all of them trying to recoup a capital situation which they now understand and which they entered into with good faith. And their new judgment is going to be, I trust, the Congress not to change it again when they go to the bank for more capital.

In my judgment, existing concession operators have no alternative but to leave their businesses on the termination date, and in my judgment that will result in a Government buyout because successor interests will have the same problem—unless, of course, it can be acquired more cheaply, and the only way you can acquire it more cheaply is to buy it from the Park Service, which will be forced to buy them out.

Now, unfortunately, not all the concessions are small in size. This legislation will be an extraordinarily expensive piece of business. There is no accurate record of how much the total possessory interests held by concessionaires is worth in today's dollars, but one has only to look at the hotels and the lodges and the restaurants and marinas and other facilities around the service to realize that as concession operators opt out for more lucrative pastures, the cost to the Government could run into billions.

In all fairness, there will be some concessionaires who do elect to stay in business, but they will be few and they will be corporate interests, certainly not family interests—corporate interests that can move these kinds of investments.

Sheer economics will dictate others to leave. It just does not make any sense. They can simply leave their present contract, pocket taxpayer funds which the legislation so graciously gives them and then go right back in and bid. They will be richer, the Federal Government poorer, but we will have satisfied the need to look very fine in front of those who say that we do not have enough competition in the current system. They will never judge us. We will not be around to be seen when this turns out to be as I predict.

I will have a couple of amendments to offer today, one which will provide a standby option to deal with possessory interest, which would leave the Secretary with his current discretion to continue it on renewal or negotiate a different arrangement should my views prove to be correct.

My second amendment is, lest we lose track of all of this and become anonymous, as we so often do, will mandate certain reports to Congress so that our successors may judge if we were right or wrong in our actions today.

I hope I am wrong. It will be good for the park system. It would be very good for the park system if I am wrong. But I do not think I am. We have not gotten around to figuring out how to try this. We are just going to go do it even though we have in hand a system which has worked and we know it to have worked. But there is something that bothers people about people being successful when they have franchises from the Government. There is something that makes us as legislators feel very uncomfortable that somebody is making money without ever realizing what the somebody making money is providing for the citizen. He is providing the best visitor facilities of any national park system that exists anywhere in the world.

I have been all over the world, Madam President. I have been on the African Continent, been in China, been in Japan, been in Europe, been in Britain, been in South America. I have been to parks in all of these places. They do not hold a candle to what we have done, and I tell you we deal with it carefully or we abandon it.

The intent of the amendment is to allow the Secretary the discretion to allow any concessioner the right to retain his possessory interest, and only to the extent that the continuation of such interest advances the policy objectives of the act. By passing this amendment we can possibly avoid a cost to the Government that will be in the billions of dollars.

Possessory interest is a right under current law and in many cases worth a substantial amount of money. If Congress chooses to eliminate the right of possessory interest the owner of the right is entitled to just compensation.

By maintaining possessory interest in a facility a concessioner will be expected to continue to invest their own money in capital improvements. If the existing concessioner changes he or she would be reimbursed for their possessory interest and the new concessioner would have the possessory interest if the Secretary has determined that continuation would advance the policy set forth in the committee amendment. Voting for this amendment gives us a way out of coming up with money we do not have, and in addition our counties will not be impacted quite as soon.

For example, the Park Service eliminated possessory interest at Yosemite National Park. This means that Mariposa County will have a $700,000 short fall—1993 dollars—to its tax base. This is something that the residents of Mariposa will have to make up from other sources.

Madam President, another point that I must make is to describe the situation facing an existing concessioner. If for a moment we assume that at a park in your State there is a concessioner we will call "A" with a possessory interest of $1 million in real property. "A" faces a renewal of a 10-year contract with an assumed 20-year schedule for reducing the value of the possessory interest. At the present time, A's possessory interest is worth $1 million and can be used as collateral. The real property's value as collateral is devalued upon enactment of the legislation because the legislation would reduce the value over time. The value is also minimal for any new concessioner upon enactment of this legislation.

For A, however, the cost of renewal is not simply the decrease in value over the 10-year contract period of $500,000—$1 million times length of contract divided by reduction schedule. Instead, the cost of renewal to "A" is the difference between that value—$500,000—and the time value of the $1 million over the same period. $1 million invested at 7 percent compound interest would be worth $2 million at the end of 10 years, so the actual cost of renewal to "A" is $1.5 million at the end of 10 years. Coupled with the loss of the interest as further collateral, this legislation should discourage present concessionaires from continuing, unless the Park Service buys them out. And it discourages a new concessioner from coming in, until the Park Service buys out the current concessioner. Either way, business decisions dictate that the Federal Government must buy out the current possessory interest.

My amendment simply allows the Secretary the discretion to avoid the problems presented in this scenario. If he so chooses, he can continue possessory interest for the purposes of fiscal responsibility and integrity. In addition to the cost of concessionaires leaving and taking the value of their real property with them, we must consider the potential cost of the concession bill on appropriations. The Congressional Budget Office estimates that within the next 5 years, 90 percent of all franchise fees will be going into the new fund established by this legislation. Assuming that perhaps 90 percent of the contracts will have been renewed, I present this plausible scenario—Concessioner "A" has a possessory interest. If "A" chooses to renew, which is not likely based on what I just told you, "A" knows that the value of the possessory interest will be reduced over a period of years.

If "A" does not renew, either the Park Service or a new concessioner would have to pay "A" the full value of the real property in the possessory interest. A likely scenario is that existing concessionaires will decide to capture their possessory interest and reinvest it elsewhere. This scenario is particularly likely where the possessory interest is significant, or represents the major assets of a firm or family. For a family, that possessory interest may represent funds for children's education, retirement, or inheritance.

If the existing concessioner walks, other potential concessionaires may very well wait until the Park Service pays concessioner "A" so they do not have to absorb the cost. Only then will all future bids on the concession be free of the expense of the value of the possessory interest.

We do not have a firm estimate on the total amount of possessory interests outstanding in the hands of current concessionaires. However, a brief survey of some of the existing concessionaires has yielded figures of over $500 million, with individual figures ranging from $100,000 to almost $150 million. And, this is only a partial inventory with the value of some major concessions unknown. If the final figure winds up around $1 billion, and one assumes that 90 percent of the contracts will come up over the next 5 years, as CBO did, then Interior and related agencies will assume a potential indebtedness of about $180 million each year. That $180 million will come at the expense of National Park maintenance and other programs funded by Interior and related agencies. The other alternative is that the Secretary will reduce fees to enable the concessionaires to recapture his investment. That would reduce Federal revenues and increase the deficit.

The easy way to avoid the possibility of present concessionaires leaving, and taking the value of their assets with them is to provide the Secretary with some discretion on all current possessory interests. Over time, the Park Service may be able to buy out existing interests, but that is something that can be controlled in appropriations.

I need to stress again that my amendment cures the problems pre-

sented in this scenario by allowing the Secretary the discretion to continue possessory interest if it meets the policy objectives of the act.

In this manner the Secretary has some control over the maintenance of fiscal responsibility during the appropriations process. We have discussed the likely scenario that existing concessionaires may decide to capture their possessory interest and reinvest it elsewhere. And, we have discussed the undesirable effect to this legislation on the appropriations process. If passed as currently written, there is the potential that the need for appropriated funds will be totally unpredictable, and possibly overwhelming.

My amendment reserves the options of the Secretary to meet the policy objectives of the act without further direction from Congress.

I yield the floor.

Mr. BENNETT addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. BENNETT. Madam President, I share in some of the concerns that my good friend from Wyoming voiced when he began his presentation. I am uncomfortable opposing the Senator from Wyoming on a business or political matter, and I have great respect for his judgment and his predictive powers. I think his analysis of what is going to happen is right on most of the time.

At the same time, I must rise to disagree with him on this occasion. He says he hopes he is wrong about his predictive powers. Obviously, so do I. But I would like to respond to some of the issues that he has raised and make it clear why I am supporting this particular legislation.

First, I must agree completely with the Senator from Wyoming in his discussion about the wisdom of the past with respect to national parks. I agree that our decision—ours, that is, the Congress—was a wise one in setting up the system that we have at the moment. I agree that the Federal Government would undoubtedly not have put the amount of investment into the national park concessions that has been put there. And I applaud the past Congresses for the action that they have taken. The one thing with which I disagree with the Senator from Wyoming is his statement that the situation has not changed. As I look at it, I think there has been significant change that requires some kind of change in the underlying statute. The change has been in the number of visitors going to the national parks and the demand that has been made on the concessions and, as a consequence, in the attractiveness of a concession to an investor.

I can understand that where there are a limited number of visitors to a national park and where there is a limited season in the national park, unusual inducements are going to have to be offered to a businessman or business woman to get him or her to go in and take the risk involved in that circumstance. But let 10 years pass and the number of visitors double, triple, or quadruple, and all of a sudden you have a situation where the concession is an extremely valuable economic asset.

And we are saying, "Well, if you happened to have been lucky enough 15 years ago to be the one to get the concession, you now have a lifetime right, an eternal right, to hang onto that and reap the benefits from it regardless of what may have changed in the marketplace." Then we would protect that eternal right to the point of freezing out any competitor that might be able to service the park visitor better than the person who was there 15 years ago.

I agree with the Senator from Wyoming in his statement that the primary purpose of these concessions is to service the park visitor. There is no question in my mind but that the driving consideration in all of the decisions was what is best for the park visitor and not what is best for the concessionaire and not what is best for the Park Service—indeed, not what is best for the Park Service and its view of how the park should be administered—but what is best for the park visitor. Ultimately, that is why we have national parks. If we did not have national parks for the purpose of helping the visitor, we might as well turn them off to the visitors, keep them out except for the backpackers.

However, we have decided, wisely, to open them, ask people to come, and make them available to the widest possible group of visitors, and while the visitor is there we will provide services—food and other amenities—that make the visit a worthwhile experience.

I submit that the present system is not the best for the park visitor however well it may have served us in the past.

I offer as an example of how many people would be interested in providing the very best possible services in a competitive situation. There was a statistic given by a present concessionaire who was arguing in favor of the present system and unwittingly, I think, undercut that argument himself. He said, "Senator, it is not true that the present system discourages bidding. The last time our contract came up for renewal, there were 15 bidders against us. Naturally, we kept them all out as our right of refusal." I asked how long ago it was, and he said, "About 90 days." This is not ancient history. This is current history.

I submit, given the size of this particular proposal, the 15 bidders were very much aware of potential changes on this floor in this legislation and were prepared to accept the risks contained in the current version of S. 208 because they were very, very much in the marketplace of ideas at the time the bids were made. They were all frozen out under the present circumstance, and if we continue in the present circumstance, we guarantee that there will be no competition on the part of new operators who might have better concepts as to how to service the park visitor.

I must address the issue raised by my friend from Wyoming with respect to bankers willing to loan on these kinds of investments. I have had some experience going to bankers trying to get money from them. I discovered, as one banker told me very early in my career, the bank does not care about your collateral. The bank wants to know how you are going to pay the loan back.

I said, "I have a house. It is a wonderful house. Come see it." He said "No. I don't want to come see it." I said, "It is worth more than the amount I am asking here in loan. Let me pledge my house so that I can have this loan so that I can go into this wonderful business that I will be glad to tell you all about."

The banker gave me some of the best advice I have ever had. He said, "The bank does not want your house. The bank does not want to be in the real estate business. If we wanted to be in the real estate business, we would have organized a subsidiary to be in the real estate business. We want to know how you are going to pay it back, not what we are going to get when you don't pay it back. We are interested in the cash flow from your business."

Well, then I had to start dancing pretty nicely by the banker's desk because my business plan was based on a lot of hope and no real indication as to how I was going to be able to pay the bank back. Fortunately for both the bank and myself, the bank turned down my application for a loan, and I never got into that business and never had the opportunity to lose all of the money that I would have lost because it was not the right business for me to have been in. The banker was smart enough to see that. I was not.

As someone goes to the bank to say, "I want to finance the purchase of facilities at a national park in order to get into the park concession business," the banker, like my old friend, will say, "How are you going to pay this back?" Not, "How much is it going to be worth on the back end?" The banker will look at cash flow, not collateral, in order to make the loan unless it is a different kind of banker than any of those that I have dealt with.

Well, we are told, without anything on the back end, the cash flow will not sustain any kind of investment. You have to have a promise that you can cash out at the end of the contract or you will not take the risk. At least no reasonable businessman will.

I hesitated whether or not to share this example with the Members of the Senate. But I decided that like any

concrete example from the concessionaires—I will talk about that in a moment—I might as well, because this is the best example I can find, and it strikes a little bit at the heart of the argument of the Senator from Wyoming because it has to do with a piece of property in Wyoming.

Since I came to the Senate, I was informed by the Ethics Committee that I could no longer be involved in any of the businesses in which I have my investments except as an investor. And under the advice of the Ethics Committee, I have created a managed asset trust. I have turned all of my assets over to that trust, and the trustees are making all the business decisions.

One of the investments that was offered to our trust has to do with a piece of property in Wyoming. I looked at it and said to my trustees, "You are going to make the decisions under the terms of the trust. But under the terms of this lease, once the lease is over, all of the leasehold improvements that we have put into this property will revert to the landowner, and, to use the language of this debate, possessory interests will be zero. And I do not think we can make enough money in order for this to work. I do not think it is going to work."

The trustees said, "Well, thank you very much, Senator. Now we are running the trust, and we will run the numbers and tell you whether or not the cash flow over the life of the contract is sufficient to service the contract." They came back to me and said, "Guess what?" I said "What?" They said, "We ran the numbers. We have done the analysis. We are going to go ahead with the purchase of the lease even though there is no interest at all at the end of the lease. We think we can make enough money on the cash flow that will not only justify the investment but make you some reasonable return along the way."

They have gone to a bank in Wyoming and presented the lease, and the bank said, "We would be delighted to fund that lease because we can see from the cash flow how you are going to be able to pay us back."

So I accept the judgment of the trustees of my managed asset trust. They may be wrong. I may end up seeing that asset lose money, seeing that go down the drain, but at least the very hard-nosed trustees who are looking after my assets, as well as the Wyoming bank that has examined the lease, have said it is worth making the investment even though the possessory interest at the back end will be under the terms of the contract.

Again, Madam President, this is an illustration of the fact that the bank is not interested in collateral. They are interested in cash flow, and as an investor so am I.

I said I hesitated to use that example. I would have much preferred to have some real numbers out of the concession world to deal with in making this analysis.

Indeed, as we were formulating the legislation in the committee, I said to the representatives and concessionaires who came to see me from time to time: Can you give me some numbers? You are giving me philosophy, you are giving me for instances, you are giving me hypotheticals. Can you give me some firm numbers, actual numbers out of the concessionaire's world in which you live? As a businessman, I am always interested in real numbers. They said: Yes, we can give you some real numbers. But somehow the real numbers never materialized.

Finally, after the bill passed the committee, one of the concessionaires came in and said, "Here are the numbers." They had some very interesting numbers about the size of their operation, in terms of total volume, about the number of taxes they were paying in my State of Utah, property taxes, sales taxes, and franchise taxes. That was all very interesting. But there was one number that was missing. They never told me about return on investment. They never told me how much money they were making under the present circumstance, which, if I were to be a bidder against them, I would want to know. If I were to be a bidder against them, I obviously would not want any confidential information out of their files. I would construct these numbers myself if I were to be a bidder against them. They would be closely guarded.

I promised these people I would not disclose their return on investment here or anyplace else. I just wanted to know how badly they were going to be hurt in terms of cash flow. And they would not tell me.

Again, as a businessman, I have to have that kind of data before I can say with certainty that the dire consequences they are predicting are going to come forth. Their failure to provide that kind of data, Madam President, leads me to believe that they are not confident that that data would convince me that the dire consequences predicted would come to pass. So, as I say, I have gone to the example out of my own circumstance to show that it is entirely possible to have an investment where the possessor goes back to zero and still does quite well.

Let us talk about the issue raised by the Senator from Wyoming with respect to the best franchisee versus the cheapest franchisee. We have heard that argument a great deal. Once again, in the context that I have approached this, it is a persuasive argument. All of our consideration must be based on the question: What is best for the park visitor? Obviously, the best franchisee would be best for the park visitor.

Who is the best franchisee? The best franchisee, by definition, is the one who knows the most about the business—the one who brings the greatest expertise and background to the table at the time of the bidding. Who will that be when these contracts come up for renewal? Obviously, the prejudice is that it will be the existing concessionaire, as the existing concessionaire will bring to the table years and years of experience, years and years of understanding, not only in the top management, but all the way down through the middle management and the people who meet the public directly. That kind of experience, in any kind of competitive bidding, will be enormously valuable to the existing concessionaire.

As I have said to many of them who had said, "We are afraid we are going to lose our contract to somebody else": "You must not have very much confidence in the expertise that you have built up over the years while you have been running this operation, if you think somebody else can come in and knock you out of the box with a complete start-up operation."

I have had the experience—as every businessman has—of having existing suppliers come to bid on a renewal of their contract. In almost every case, I go with the existing supplier because of that expertise. But I want the right to pick a new one just in case the existing one is falling down. That is what competition is all about. And it is the existence of that right, created by this bill, S. 208, that will sharpen the performance of the existing concessionaires and thereby improve the experience of the park visitor.

Back to the reference I made earlier, an existing concessionaire with 15 bidders against him, under the present circumstance, can turn those 15 aside with the wave of his hand and ignore the competitive pressure of those bids. Under our bill, the existing concessionaire, faced with 15 bidders, probably will still get the contract, but he will sharpen his performance to make sure he gets the contract against those others.

There are a few other items that I think need to be referred to in the RECORD. The Senator from Wyoming talked about most of these being "mom and pop" operations that have been in the family for generations, and that is true. He indicated that it would be unfair, in many of these circumstances, to take away that which has been the sole livelihood of these families over several generations; and I agree, which is why I prevailed upon the Senator from Arkansas, Mr. BUMPERS, to raise the cutoff point from $250,000 a year to $500,000 a year, and to exempt river runners and trail guides from the provisions of S. 208, so that those people who are not in the kinds of circumstances that we have been talking about with respect to huge investments, have the kind of protection that the present legislation gives them.

I agree with the Senator from Wyoming entirely about the success of the present legislation in those areas, and I do not want to upset it. We are talking only about activities in excess of $500,000 a year. We are talking about a relatively small percentage of the concessionaires that will be affected by this circumstance of S. 208 regarding possessory interest. We are talking about those that will attract the highest number of bidders and competitors and produce the increased or the best result for the park visitor by virtue of the power of competition.

So, Madam President, in spite of reluctance to disagree with my good friend from Wyoming, I stand here in support of S. 208, as it has been reported by the committee. I believe that it is the best business-oriented approach to this particular challenge. I conclude, as I began, by saying to the Senate and to my friend from Wyoming that I agree with his analysis of the past. My only disagreement comes with his statement that the situation has not changed. I believe it has. I believe the legislation must be updated to reflect that change. I agree with him that we will both have to wait now and see whether his predictive powers are better than mine, and if it turns out he was right and I was wrong, I stand prepared to make whatever changes we might have to make and whatever apologies we might have to make. But there comes a time in every argument within a corporation as to the next business step to take, when somebody must say: All right, I have heard all of the arguments on both sides, and both seem to have merit, but a decision must be made, and we must proceed in one direction or the other. I am one, having heard all of those arguments, who has decided to proceed in the direction outlined in S. 208.

Parenthetically, or as an aftercomment, Madam President, I indicate that I have great interest in the amendments that the Senator from Wyoming has outlined here and would like to go over them carefully. At first blush, I see no reason why I could not accept and support them. I would like to confer with the chairman of the committee and get his reaction to them before making any final commitment.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Arkansas is recognized.

Mr. BUMPERS. Madam President, I think I would be remiss if I did not spend a minute to laud my distinguished colleague from Utah, Senator BENNETT. He came here last year and, I think in perhaps the shortest period of time I have ever seen, has established his credibility with virtually every Member of this body. I know this is an accolade that he would not care to hear and would just as soon I omit in my opening statement, but the truth of the matter is, after 16 long years that I have labored on this legislation, we would not be where we are today without Senator BENNETT.

I would not presume to say anything in addition to what he has already said, but he has obviously been successful in business. He is a man of unquestioned integrity, and that goes to intellectual integrity as well as all other kinds that you can conjure up.

But when we were debating this bill in the Energy Committee, without repeating it, he made one of the most eloquent statements I ever heard in the 19 years I have been in the Senate. We come from opposite sides of the aisle, but I can tell you, when people like Senator BENNETT and I can sit down and reason together, as we did on a number of occasions, trying to hammer out a bill that he thought was reasonable and that I thought was reasonable, when we do that, the people's interests are best served.

I think that while Whitewater rages across this city—not so much across the country, but across this city—there are a lot of hardworking Senators who continue to sit down and reason together and do the people's business.

This was not, in my opinion, all that easy for Senator BENNETT. But even though I put in 16 years of hard work on this bill, he deserves, after being here a year, equally as much credit for crafting this bill and its passage out of committee, on a vote of 16 to 4, as I do.

Madam President, I will talk more about this bill in just a moment. But I say that another reason Senator BENNETT's membership in this body has alleviated the frustration level somewhat for me is because it seems as though every single thing I get involved in either is never going to pass, or it takes forever to pass. I probably speak for every other Senator, perhaps every Senator, that has this absolutely unbelievable skyrocketing level of frustration. It is not a very happy place; let us face it. You go to the Cloakrooms; you talk to Senators in private; it is not a happy place because of the frustration level and the "inability to get anything done."

I know that my friend from Wyoming and other western Senators sometimes think I am a Johny-one-note: If it does not hurt the West, I am not interested in it. I see the Senator nodding his head in agreement. But I remember when I went to work trying to make the Federal Government lease oil and gas lands belonging to the Federal Government on a competitive basis, and I was considered a pariah for having done that. That only took 8 years, Madam President; 8 years to change a fraudulent lottery system for awarding oil and gas leases on Federal lands that were worth millions. We were letting them go for $1 an acre because that was the way we did it in 1920.

I am going to save my mining reform speech until later, because everybody has heard that so many times, and that is a place where Senator BENNETT and I will differ. But I can tell you that we honestly differ.

In any event, when it takes 16 years to do something as patently correct as S. 208, you can see why the frustration level is maddening.

I do not want to denigrate any Senator, because I have indulged in it myself, but we sometimes make the most arcane arguments in this body because we have—not a hidden agenda, but we have perhaps a constituent back home that has 100 employees and he has written saying he is going to have to shut the plant down; he is going to have to lay people off. And we come over here and we do not say an employer in my State with 100 employees is going to have to lay half of them off. We use all these little arcane nuances, trying to give people who either want to vote no or yes against their better judgment, something to hang their hats on.

I have just recently introduced a bill which allows the States to levy use taxes or sales taxes on merchandise coming into their State from mail-order houses. It is a business which is mushrooming in the country. We could never do anything about it because of the Supreme Court decision until 1992. Now the ball is in Congress' court. But you cannot get a vote from any Senator who has a fairly sizable mail-order house in his State. I will have a very, very tough time with this legislation.

But I just make this point, and I am not here to debate that bill. People should ask themselves a simple question: What if everyone in the country bought merchandise from the mail-order houses? Incidentally, they are heading in that direction. What would the State do? Or imagine other State services. The sales tax is their No. 1 tax. They pay for it. L.L. Bean pays the sales tax in Maine because that is where they are located, and they have no problem in doing it. But they and others similarly situated will say: If you make us pay taxes to the State of Arkansas, we will have to lay off 500 people, or shut down; or we will do something else.

In this particular case—and I am not applying this to the Senator from Wyoming, because I think the Senator from Wyoming genuinely resisted the passage of this bill because of a strong belief that the present system was working fine. But here is the way I look at it: When I go home and talk to the Chamber of Commerce, and more especially when I went to the people of my State when I ran for Governor and later Senator, do you know what I said? "I will run the State of Arkansas like you run your business. We will husband the money; we will not squander your tax money."

When I came to the Senate, I felt that I had performed sufficiently well

on that commitment as Governor of my State. I said, "I promise you these things," and then I did them. "When I go to the Senate, if you will send me there, I will do my very best to see to it that the U.S. Government is operated in a more businesslike way. We will stop unnecessary spending, if I have anything to do with it, and we will stop giveaway deals to protect this group or that group, and try to treat everybody fairly."

So shortly—to be precise, in March of 1979, 4 years after I came to the Senate—I became chairman of the Subcommittee on Public Lands, National Parks and Forests. And the first thing I did was to hold a hearing on why park concessioners in this country, people who run all the concessions were paying such an infinitesimally small amount for the privilege of operating a concession on lands belonging to the taxpayers of the United States.

The first hearing was held in March 1979. And we are here almost 16 years to the day after that, 15 years, getting ready to pass a bill.

Madam President, in 1992 658 park concessioners—those who operate everything from canoes on national rivers to the operation of hotels and restaurants in Yosemite National Park and Yellowstone National Park and Grand Canyon—took in $650 million. That was in gross revenue. From that $650 million, the taxpayers of America got the princely sum of $18 million, or 2.7 percent.

And the opponents would say, "Yes, but you don't understand. They built this hotel. They built this lodge. They built this new restaurant."

And that is true. That is inarguable. They had built facilities inside the parks at the insistence of the National Park Service and they are entitled to compensation for that.

But one of the problems with that was, those possessory interests—that is what we call them—once they build a hotel at Yosemite or some other national park, when their contract expired, they could do either of two things: they could bid to renew their contract, in which case they had what is called a preferential right; and, second, if they chose not to bid to renew the contract, they were entitled to what was called sound value for that improvement they had built in that park—like a hotel.

For example, if the concessioner at Yosemite spent $10 million on a new hotel and 15 years later, when his contract expired, he chose not to bid again—I cannot think of an instance where that ever occurred, because they love these contracts; they always bid for them and they had a bird nest on the ground because nobody could take it away from them—but he was entitled to what was called sound value. So for that $10 million hotel that he had built 15 years before, he was entitled, not to its depreciated value, but essentially to its fair market value, and the fair market value of that possessory interest could very well be $15 million, or $5 million more than he paid for it, even though, for tax purposes, he had depreciated about half the cost.

So when they argue possessory interest, almost without exception, that possessory interest is worth more when his contract expired than it was when he built it.

Madam President, in 1990, the Interior Department's Inspector General did an audit on 29 concession contracts. Of the 29, 28 were awarded without any competition. Why? Because the law provided that if you had a contract, the only way it could be taken away from you was to refuse to match a competing bid.

Witness this: Let us assume that you are bidding on a contract and you bid $100,000 a year. You have the contract now and it is expiring and it is coming up for renewal.

Let us assume you want to pay $100,000 a year and the Park Service says, "That doesn't sound quite reasonable to us." So they go out and find other bidders. And somebody comes in, after doing a lot of work, trying to decide for themselves what this contract is really worth. Let us assume an outsider comes in and says, "I'll give you twice that, $200,000." Under existing law, do you think the Park Service gives that to him because he offered twice as much as the existing concessioner? Why, no. They go back to the original contractor and say, "Look. We have a bid for $200,000. Do you want to match it?" He says, "Yeah, I'll match it." Do you know where that leaves the guy that made the first offer of $200,000? Out in the cold.

TW Services, one of the biggest operators in the United States—I believe it may be a subsidiary or parent company of TWA—testified before our committee on two separate occasions and said:

> Why would I spend a half million developing a bid on a contract, knowing that all the guy who has the contract now has to do to keep it is to match my bid? So why would I go out and spend money bidding on a contract, knowing that all the guy that has it has to do is match my bid and I am out in the cold?

Madam President, you cannot go home and tell the Chamber of Commerce how eager you are to spend their money as though it were their own, or that you are going to spend their money as if it were your own, or that you are going to conduct business at the Federal level like a business, you cannot make those speeches and champion that kind of a situation.

I told you about the inspector general auditing 29 concession contracts; 28 of the 29 were awarded without competition. And the Park Service says that competitors do not even bother to bid. And why would they? Out of 1,900 contracts awarded, only in 100 cases out of 1,900 were competing bids offered.

Madam President, I am chairman of the Small Business Committee and a former small businessman. That does not say a lot. I was a lawyer. I was a small businessman. I had a farm. I had three kids. I would do anything. I even owned a cemetery at one time to keep bread on the table and make some arrangements for my children's education.

But the small business community came to see me and said, "Senator, we just take in $100,000 a year or $300,000 a year. We have 75 canoes on the Buffalo River in Arkansas. And, you know, nobody is going to make any money out of this thing."

In order to accommodate what I considered to be fairly legitimate concerns of small business, we have exempted five-sixths of all the concessioners in this country. Of all 658 of them, we have exempted five-sixths of them from the elimination of preferential right and we left them with a preferential right.

But, we also give the Secretary some discretion in determining whether they are entitled to a renewed contract or not. They have to perform and perform satisfactorily and the Park Service has to believe that they have been performing very well before they are entitled to the so-called preferential right of renewal.

Madam President, my notes here take me through some of the fundamentals of the provisions of S. 208.

For example, S. 208 establishes a competitive selection process for the awarding of contracts, directs the Secretary of Interior to prepare a prospectus identifying the minimum contract requirements and to select the best proposal.

In determining what the best proposal is, he still does not have carte blanche. He has to decide that the proposal is responsive to the minimum requirements, that the proposal protects and preserves park resources and provides necessary and appropriate facilities and services at reasonable rates. That is the first thing he has to do. Then he has to determine that this person is experienced, has a background for it. And, finally, he must consider the franchise fee offer—although the bill makes crystal clear that the consideration of how much money you are going to get out of the contract is subordinate to the objectives of preserving the park and the park's esthetics and the park values.

Really, about the only place the Senator from Utah and I had to sit down and really work this thing out was on how long should a contract be. My bill provided you could get a 10-year contract, and at the discretion of the Secretary it could be extended for 5 years. Senator BENNETT said—and I really had no objection to this—the Secretary

should have the right to extend it to 20 years. The Secretary, depending on all the considerations that he would use, may extend it for 5 years or he may extend it for 10 years. But to give him that authority, where somebody has a major investment and is doing very well and the Government is doing well too, I had no real quarrel with that.

In addition to all this, the Secretary is required to grant a preferential right of renewal to any concessioner with a contract, where the Secretary estimates that the annual gross revenue will be less than $500,000. The Secretary would have to find the concessioner was operating satisfactorily during the previous contract and that the proposal for the new contract satisfied the minimum requirements established by the Secretary.

I think that pretty well sums up what we have done. I take a great deal of pride in the fact we are finally standing here, after 16 years, doing something important. You will not read about it in the Times or the Post. You will not read about it in very many publications. Unhappily, that is one of the problems in this country, people have a difficult time determining what is chaff and what is wheat. But I can tell you, this is a very important bill. It is not single-handedly going to restore people's confidence in Congress, but for the people who watched this bill all these years, they are going to applaud. They are going to say those guys are finally getting their act together. I again want to applaud my distinguished friend from Utah.

I say to my good friend from Wyoming, he offered some amendments in the committee. He has a couple here I think are acceptable. He has been very helpful in trying to work out getting to the time when we could get on the floor with this bill, and I want to thank him very sincerely for his cooperation also.

When I became chairman of the Public Lands Subcommittee in 1979, the very first oversight hearing I held was on concessions reform.

Since that time, numerous congressional oversight hearings have been conducted, including hearings last Congress and this Congress. In addition, this issue has been the subject of numerous studies, reports and analyses prepared by the Congress, the General Accounting Office, the Department of the Interior inspector general, the National Park Service, and a variety of private research organizations. All of these studies have identified problems with the current Concessions Policy Act which need to be addressed.

Even more troubling than the low franchise fees are provisions in the existing law which effectively eliminate any competition for concessions contracts in National Parks. For example, one provision of the existing law grants existing concessions a preferential right to renew their contracts. Because an incumbent concessioner can simply match any higher bid, there is little incentive for a potential competitor to spend time and the money required to submit a serious bid.

According to the National Park Service, since the passage of the Concessions Policy Act in 1965, only seven of the approximately 1,900 contrasts entered into have been awarded to a competitor where the incumbent concessioner bid to retain the contract, and none of the seven cases involved a contract in excess of $1 million annual gross revenues.

A 1990 audit report prepared by the Department of the Interior's inspector general audited 29 concessions contracts; of those, 28 were awarded without competing offers. The Park Service indicates that competitors have submitted offers in only about 100 of the 1,900 contracts awarded.

This year, following the subcommittee hearing, my colleague from Utah, Senator BENNETT, and I worked out what I believe is a very good compromise agreement. That agreement, which is reflected in this bill, eliminates provisions in the existing law which have proven to be so anticompetitive, while ensuring that the Park Service will select the best concessioner, and recognizing the different needs of outfitters and other smaller operators. The bill allows five-sixths of the concessioners to keep a preferential right of renewal, yet ensures that the large contracts, which account for 93 percent of all concessions revenues, are opened to competition.

Over the years, the issue of concessions reform has been extremely controversial. Yet last month, the Energy Committee reported S. 208 by a vote of 16 to 4. Much of the credit for this margin goes to Senator BENNETT, the coauthor of the substitute amendment.

I am also pleased that the administration strongly supports enactment of this bill. Last year, the Department of the Interior adopted new regulations and standard contract language that contain many of the elements included in S. 208.

I believe that members of the Senate will agree that this legislation is a balanced, bipartisan measure that will ensure that both the American public and our National Parks benefit from this increased competition.

Madam President, I would like to briefly summarize the major provisions of S. 208, as reported by the Energy Committee.

REPEAL OF CONCESSIONS POLICY ACT OF 1965

As reported, S. 208 repeals the 1965 Concessions Policy Act while providing that the validity of contracts entered into under the 1965 act will not be affected.

COMPETITIVE SELECTION PROCESS

S. 208 establishes a competitive selection process for the awarding of concessions contracts and directs the Secretary of the Interior to prepare a prospectus identifying the minimum contract requirements, and to select the best proposal. In determining the best proposal, the principal factors to be considered include the responsiveness of the proposal to protecting and preserving park resources and providing necessary and appropriate facilities and services at reasonable rates.

In addition, the Secretary would be required to grant a preferential right of renewal to any concessioner with a contract that the Secretary estimates will have annual gross revenues of no more than $500,000, regardless of whether the concessioner had a possessory interest or not. In both cases, the Secretary would be required to find that the concessioner had operated satisfactorily during the previous contract term and that the concessioner's proposal for the new contract satisfied the minimum requirements established by the Secretary, before granting a preferential right of renewal.

In addition, the bill includes language directing the Secretary, in selecting the best proposal, to take into consideration the experience, expertise, and related background of the applicant in providing the same or similar services as required by the prospectus.

PREFERENTIAL RIGHT TO PROVIDE ADDITIONAL SERVICES

S. 208 prohibits the granting of a preferential right to a concessioner to provide new or additional services at a park.

POSSESSORY INTEREST

S. 208 states that any concessioner who currently has a possessory interest will retain that interest, as defined under the 1965 act—either as provided in the concessions contract or sound value—for the duration of the current contract.

A concessioner who is covered by the 1965 act, and who does not renew the contract, would be entitled to receive the value of the possessory interest, in most cases sound value as defined in the 1965 act.

A concessioner who is covered by the 1965 act and renews the contract under this act, would be required, as a condition of entering into the new contract, to begin reducing the value of the possessory interest—as of the termination of the previous contract—using straight line depreciation over the useful life of the asset. Such depreciation period may not exceed the depreciation period used for Federal income tax purposes for such asset—which is currently 39 years.

A concessioner who enters into a contract under this act and builds a structure would have an interest in such structure equal to the actual original cost of construction, with the value to be depreciated over the useful life of the structure, not to exceed the depre-

ciation period used for Federal income tax purposes for such asset.

A concessioner who is not awarded the subsequent contract would be entitled to receive from the United States or a successor concessioner the depreciated, or book value, of the structure.

FRANCHISE FEES FOR SIMILAR SERVICES

If multiple contracts are to be awarded to provide the same or similar outfitting, guide, river running, or other similar service at the same approximate resource or location within a park, the bill requires the Secretary to establish an identical franchise fee for all such contracts, based on fair market value, as determined by the Secretary.

USE OF FRANCHISE FEES

S. 208 provides that franchise fees are to be used for resource management and protection, maintenance activities, interpretation, and research. Fifty percent of the fees are to be allocated among the parks on the basis of need, as determined by the Secretary, and 50 percent are to be made available to parks in the same proportion as the percentage of total franchise fees collected by the park.

PARK IMPROVEMENT FUND

The Secretary would be directed, where practicable, to require a concessioner to establish a park improvement fund in lieu of receiving all or a portion of the franchise fees. The fund would be used to finance activities and projects within the park consistent with the park's general management plan, and other applicable plans.

CONGRESSIONAL FINDINGS

As introduced, S. 208 contained congressional findings which stated that facilities should be provided within a park only when the private sector or other public agencies could not adequately provide such facilities within the vicinity of the park. The committee reported bill deletes this provision, restates provisions from the 1965 act, and adds language making clear that concessions facilities should be provided by the private sector, if possible.

DUTIES OF THE SECRETARY

S. 208 requires the Secretary to set forth in any prospectus the facilities or services to be provided by the Secretary for the concessioner. In addition, the Secretary is directed to promulgate regulations to establish a method or procedure for the resolution of disputes between the Secretary and a concessioner in those instances where the Secretary has been unable to meet the conditions or requirements, or is unable to provide the services contained in the prospectus.

CONGRESSIONAL NOTIFICATION

S. 208 provides for congressional review of any concessions contract with anticipated gross receipts of excess of $5 million or a duration of 10 years or more, indexed to 1993 constant dollars.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Madam President, certainly I will send the two amendments to the desk of which I spoke and about which the Senator from Arkansas spoke. I think it is important for the purposes of concluding the debate to respond to a couple of things I have heard.

The Senator from Utah says, quite correctly: The situation has changed, the national parks are enormously popular—and indeed they are. One of the reasons they are enormously popular is because of the visitor facilities that have been provided under the Concessions Act.

The type of concession, of which the Senator spoke, is generally speaking the largest hotels, the largest kinds of operations, which have the ability to absorb some of the increased visitorship. The average concession is not such a thing. They work, indeed, under the control of and direction of the park superintendent and the National Park Service. So they cannot, if visitorship quadruples, they cannot put an extra 40 boats on the river if they are now running 10. They are limited in the responses they can have.

I have to say I am going to go to Utah and do my banking where I can find bankers who do not insist on collateral. Every time I go to the bank for a loan, notwithstanding the business plan, they tie up my ranch, they tie up my house, they tie up my family cars, they tie up anything they can get their hands on. And I have been in the habit of being successful in the businesses—not always, but generally—in the businesses I have undertaken.

Again, we have the ability in Congress to think of everything in the abstract, as though all of these little concessionaires are lined up and up here is a National Park Service and the National Park Service somehow or another is getting ripped off by all these people. We have to do something. All these people are little pigs at the bosom of the great Federal sow, in line sucking away at money that is made by the Federal Government for them.

That simply is not the case. It is not like doing business outside the National Park Service. You have to do what they tell you to do. Indeed, one of the things the Senator from Arkansas was talking about is these concessionaires have to perform and perform satisfactorily in current law. A concessionaire can be driven out of his concession by malfeasance or lack of performance. It happens, and it happens rather regularly. But what is missing here is the idea somehow what it is like to do business in a park.

My concessionaires in Yellowstone—not just TW Services, but the others—all had to shut down for the entire summer of 1988. It does not matter if there are four times as many visitors going to the rest of the national parks, that park was shut down by the fires. Business plans go awry, and that is OK if you have an interest that can continue on. But that is not so OK if you have a 10-year contract and 1 year is taken out of it. All the plans of which the Senator from Utah spoke about—cash flow and other things about how you are going to pay for it—get ripped. They get ripped right away. And that is part of it. Because in fact in the National Park Service you are not allowed to defend your properties the way you can if you are in Canyon Ranch, Big Horn, WY, or Salt Lake City. You can do things fighting fires that you are not allowed to do in the parks. It is a different way of doing business. It is not all these little piglets at the breast of the great Federal sow.

I have another example: Callville Bay, Lake Mead. An enormous storm blew it away with 3 years to go on their current contract, and the only reason they were able to raise money from the bankers was because they had a possessory interest; they had a preferential right of renewal; and a long-term contract. They got money and they rebuilt the marina. But it would not be there today had those things not been existence. They could not have gotten the money to refinance that from any bank, I do not care whether they wanted collateral or not.

The only complaint about this is coming from Congress. It is not coming from the users of the system. The users of America's parks like the concessions that exist there. I will say to my friend from Utah, people without expertise will still more often than not be the lowest bidder. No matter how many skills the local concessionaire brings to the table, that according to the terms of this bill is not something that the Secretary is going to take into account. Indeed, if he does he will be criticized by—guess who? The people sitting in this room, at an oversight hearing. I understand that so-and-so bid X for this contract and yet you awarded it to Y. "Oh, my goodness, Mr. Secretary, Mr. Director of the National Park Service, why would you possibly have done that to the taxpayer?"

Well, just think about a few of the things. Supposing you are in Indiana Dunes. That is one of the parks I have not been in, so I speak of it in the total abstract. Supposing you have a spa up there of some kind where people go to enjoy, can exercise, have massages, go out to the dunes and look at the lake, come back and do all those other kinds of things. Supposing your contract is coming up for renewal, and supposing there is a corporation in America called "Spas R Us." Does anybody doubt that Spas R Us can, for the life of a given 10-year contract, outbid a single small businessman and operate that at a loss merely to get in the door, and then, thereafter, be able to keep at bay, merely because of size, all other

competitors, not because of preferential rights of renewal or possessory interest?

I do not know. I can see where this bill is going. I think the vote in the committee was there. It does not necessarily mean that it was the right vote, and it does not necessarily mean that it was the wise thing to do, but it does mean that we have generally conceded to the desire to do something.

We, as a Congress, do not like people making money off Federal facilities. It is as simple as that. The Senator from Arkansas spoke about how long it has taken to get rid of the bidding process that used to exist for the right to drill for oil and gas. We were giving that stuff away for a buck an acre, says he. And it is true. What was not spoken is that several thousand people were bidding for the chance to get it at a buck an acre in the lottery. So we got more per acre then than we do now.

The State of Wyoming had lack of wisdom to follow the Federal Government on that, and we are making considerable less on our oil and gas leases than we did when we had the lottery. But we get more per acre and the statistic looks better, and somebody did not get rich as quickly as they might have had they been able to get this little concession for a buck an acre.

I believe, Madam President, with all my heart that is what we are doing here. I know it sounds better. I know it sounds especially good to say that we are going to have competition where none now exists. I know it sounds very good that this will bring us expert concessionaires. I do not for a minute believe that we are going to get as much money as we do now. I do not for a minute believe that we are going to have the best concessionaires merely because we have the cheapest. But that is going to be the direction in which the Congress seeks to go.

Mr. MURKOWSKI. Mr. President, no program of true Federal-private partnership has been more successful than the National Park Service Concession Program. Needed visitor facilities and services have been placed in national parks at a minimum of cost to the taxpayer. The private sector has willingly borne the burden of development.

Over the years, the Concession Program has addressed the needs of park operations, complete building improvement programs, and has consistently contributed to infrastructure improvements that were required to ensure that the needs of the park visitor were met.

S. 208 will change all this.

Let me present two examples of the potential impact of changing the Concessions Program.

The concession operator of a small marina at Lake Mead had only 2 years left on his contract when a storm destroyed the marina. Because his concession contract had possessory interest, right of renewal, and a long term, he was able to obtain financing to rebuild the marina. According to his banker, the bank would never have lent the money for a complete replacement if there had not been a more than reasonable expectation that the concessioner would be able to obtain the next 25-year contract and retain his possessory interest. Under S. 208, the marina would be no more than a patchwork of boards and pontoons.

A second example is the experience of the operation of the two grand hotels in Yosemite National Park, the Ahwahnee Hotel and the Wawona Hotel. The concessioner operating the Ahwahnee has possessory interest and the hotel is in great shape. The Grand Old Historic Wawona Hotel, on the other hand, has been in decay and disrepair for years. The difference is because the Wawona contract does not have the same possessory interest provision in the contract. The Government cannot even pay for repairs and the minimum upkeep. The Federal Government simply cannot run a service business as well as the private sector.

I could list many more successful concession operations. In fact, the effort to reform the Concession Program is overlooking one very important element. Overall, the concessions in our national parks are doing a good job of serving the visiting public. I do not hear complaints from park visitors. Visitors are offered a variety of concession services at a fair price. So why is there a move to reform the Concessions Program?

We do not need to pass wholesale changes to the program. Concessioners are accused of making vast sums of money from monopolies within the national parks. This administration wants more returned to the Treasury. Let me assure my colleagues that this is not necessarily the case. Successfully operating a concession in a park can be a very difficult business. In Alaska, the tourist season is only 3 months long. There is no time for mistakes. The Park Service very carefully regulates all prices. It usually takes several years for a new concessioner to make any profit at all.

Having said this, I believe there is room for a reasonable increase in concession fees. However, fees should not be so high as to drive the concessioner out of business. And I would remind my colleagues that the Secretary has the ability to negotiate higher concession fees under current law.

I have serious concerns about S. 208. I am convinced that if S. 208 passes as reported out of committee, the overall value each and every contract will be decreased. Many operators will simply opt to be bought out by the Federal Government. Where will the money come from? Financing will be impossible to obtain. Why would a bank lend money with shorter contract length, devalued possessory interest, and no preferential right of renewal?

Where does it leave the visitor?

Fewer services, offered at lower standards, and at a higher cost. This may well be the goal of some who would like to see our national parks placed off limits; effectively closed to the majority of those who would like to visit a national park. Fewer people will be able to enjoy our parks. The elite will truly have the parks as their private playground. In Alaska, this will be a disaster. Our parks are remote and underdeveloped. This bill will make it even harder to provide much needed visitor services.

Concessions are important to the experience the visitors have in the national parks in my State. S. 208 threatens to destroy an effective and efficient program that has faithfully served millions of park visitors. I will not support a bill that replaces private sector investment and efficiency with Government bureaucracy.

I urge my colleagues to oppose S. 208.

Mrs. KASSEBAUM. Mr. President, I rise in support of the pending legislation to inject competition into the awarding of concessions contracts in our national parks.

This reform is good both for taxpayers and for the parks. It would replace a protective Government subsidy with the guiding forces of the marketplace.

Let me make clear that, in my view, this legislation is not an attack on those concessioners now operating in our parks. Rather, it is an effort to eliminate a wasteful Government subsidy. Businesses in our parks play by the Federal Government's rules. Our job today is to ensure that those rules are fair to everyone involved—including the taxpayers.

Business profits should be controlled by market forces, not by market-skewing Government regulations. Under current law, concessioners in our parks are shielded from certain market forces and enjoy certain preferential rights. The result is that they pay the Federal Government—their landlord—less in fees than the market dictates for franchises in our parks. In essence, they are subsidized by the taxpayers. The numbers tell the story.

In 1992, concessioners grossed $650 million and paid about 2.6 percent of that—$17.2 million—in fees. The automatic granting of a preferential right to incumbent concessioners to renew their contracts has virtually eliminated competition among eligible businesses for concessions contracts. Companies that would like to bid for a franchise in the parks frequently decline to do so because the deck is stacked against them.

As a result of the market-driven competition that this legislation will create, it is estimated that conces-

sioners will return to the Government about 10 percent of their revenues in fees, or about $65 million. Let me emphasize that point—if this measure becomes law, the resulting competition is expected to increase annual payments to the Treasury from $17.2 million to $65 million, which is the level the free market would dictate. These added funds will be used to maintain our parks, reducing the need for tax dollars from general revenues.

This is precisely the sort of good-government reform we should encourage by eliminating an unnecessary and wasteful subsidy. I applaud those Senators of both parties who worked hard to fashion the reasonable compromise that today is before the Senate. I was particularly pleased with the provisions designed to assist small vendors, and I urge my colleagues to support this reform.

AMENDMENT NO. 1552

Mr. WALLOP. Madam President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1552.

Mr. WALLOP. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, on lines 14 through 21, strike paragraph 3 in its entirety and insert in lieu thereof the following:

"(3)(A) Except as provided in subparagraph (B), with respect to a concessions contract entered into on or after the date of enactment of this Act, the provisions of subsection (b) shall apply to any existing structure, fixture, or improvement as defined in paragraph (a)(1), except that the value of the possessory interest as of the termination date of the first contract expiring after the date of enactment of this Act shall be used as the basis for depreciation, in lieu of the actual original cost of such structure, fixture, or improvement.

"(B) If the Secretary determines during the competitive selection process that all proposals submitted either fail to meet the minimum requirements or are rejected (as provided in section 6), the Secretary may, solely with respect to a structure, fixture, or improvement covered under this paragraph, suspend the depreciation provisions of subsection (b)(1) for the duration of the contract: *Provided*, That the Secretary may suspend such depreciation provisions only if the Secretary determines that the establishment of other new minimum contract requirements is not likely to result in the submission of satisfactory proposals, and that the suspension of the depreciation provisions is likely to result in the submission of satisfactory proposals.

Mr. WALLOP. Madam President, the intent of this amendment is to allow the Secretary some discretion to allow a concessionaire the right to retain his possessory interest and only to the extent that the continuation of that interest advances the policy objectives of this act. By adopting it, we can possibly avoid the cost of which I have been here warning.

It is not meant in any way to be devious, but to give us one small look backward should it be that this does not work.

I have shown it to the distinguished chairman and the Senator from Utah and the Senator from Arkansas. It is my belief that it is acceptable.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Madam President, the amendment is acceptable. It has been worked out with the Senator from Utah and the Senator from Arkansas. We do not think the amendment will be necessary, because we believe that there will be bidders out there for these contracts, and the situation where a possessory interest goes without a bid will not occur.

Nevertheless, Madam President, this is a sound amendment in that it gives insurance that, if the proponents are not right, then this amendment will offer protection to avoid such a situation.

So we are glad to accept the amendment, and I congratulate the Senator from Wyoming for having worked this out.

The PRESIDING OFFICER. Is there further debate on the amendment? There being none, the question is on agreeing to the amendment.

The amendment (No. 1552) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1553

Mr. WALLOP. Madam President, I send another amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1553.

Mr. WALLOP. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following new section:

SEC. . Beginning on June 1, 1997 and biannually thereafter the Inspector General of the Department of the Interior shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the appropriate Committees of the House of Representatives on the implementation of this Act and the effect of such implementation on facilities operated pursuant to concession contracts and on visitor services. Each report shall

(a) identify any concession contracts which have been renewed, renegotiated, terminated, or transferred during the year prior to the submission of the report and identify any significant changes in the terms of the new contract;

(b) state the amount of franchise fees the rates which would be charged for services, and the level other of services required to be provided by the concessioner in comparison to that required in the previous contract;

(c) assess the degree to which concession facilities are being maintained using the condition of such facilities on the date of enactment of this Act as a baseline;

(d) determine whether competition has been increased or decreased with respect to the awarding of each contract;

(e) set forth the amount of revenues received and financial obligations incurred or reduced by the Federal Government as a result of the comparison of the Act for the reporting period and in comparison with previous reporting periods and the baseline year of 1993, including the costs, if any, associated with the acquisition of possessory interests.

Mr. WALLOP. Madam President, this amendment will require the inspector general of the Department of the Interior to report to the appropriate committees on the implementation of this act and the effect of such implementation on facilities operated pursuant to concession contracts and on visitor services.

This is a biannual report, and it will allow us some oversight capability to chart the progress of the concession program to ensure that the objectives of this legislation are being met.

I think it is important. It is clear, I hope, to people that I passionately do not believe that this bill will accomplish what its proponents suggest it will. They believe, as passionately, that it will, and that is what we gather on the floor of the Senate for. It is theoretically an arena and not a stage. But this will give us the ability to look back and see.

Too often what the Senate does, what the Congress does is toss off a proposal that seems to have public popularity, and then we never look back until way down the road and it is too late.

We have seen what happens when concessions fail, and we have seen that it is not possible to get that kind of money out of this Congress, and it is going to be worse in the future than it has ever been in the past.

This will do nothing more than give us a report that could give us a possible headline that there are rough roads ahead. We may be able to see that road and may be able to react. I will not be here, but I hope that those who see these reports will read them carefully. If I am wrong, they will have the privilege of asking that they do not need to be made anymore. If I am right, maybe, Madam President, they will be willing to take some action and say that the Park System is more im-

portant than the reputation of the people who passed the legislation.

I also will say that it is my understanding that this amendment has been accepted by the proponents of the legislation.

Mr. JOHNSTON. Madam President, I agree completely with the description of the amendment by the Senator from Wyoming and commend him on not only the amendment but the spirit with which it is offered.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1553) was agreed to.

Mr. WALLOP. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Madam President, I have spoken my piece. I have the belief, as I have stated, that the legislation is ill-founded and unwise. It has passed the committee. It will most certainly probably pass the Senate. But my opinion on it is now recorded.

Mr. JOHNSTON. Madam President, I have nothing further except to, again, commend the Senator from Arkansas for his long and finally successful quest to reform something that I think not only needed reforming but has been, in this bill, reformed in a very constructive way.

I want to echo the words of the Senator from Arkansas and congratulate the Senator from Utah, who, in a 1-year period of time, has come with a businessman's touch and has helped us reform something that has defied reformation for, I think, something like 17 years. I hope he is equally successful in helping us resolve some of the other difficult issues before our committee. We welcome his constructive hand in mining law reform, grazing, and some of our other difficult issues.

So I wish to thank him and commend him and congratulate him for excellent work. Both he and the Senator from Arkansas have really done very well.

I must say, Madam President, that the Senator from Wyoming, although he will not be voting for the bill, has been a guiding force in molding the bill. To be sure, not all of his amendments were accepted, not all of his suggestions were accepted, but the shape of the bill now reflects the direction in which he helped move this bill and move the committee. So I congratulate him for helping make this bill a better one.

The PRESIDING OFFICER. Is there further discussion on the committee substitute?

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I thank the chairman and the Senator from Arkansas for their kind words. I am very appreciative of the spirit behind them. I hope it does not hurt me too much in Utah to have some of these people saying nice things about me on the floor of the Senate, given the kinds of clashes that we have had in the past. But I am grateful for the spirit of cooperation that is behind these expressions and want Senators to know how grateful I am.

I say to the chairman, I would be happy to work on mining reform and, indeed, will be involved in that as well as grazing. I think it is safe to predict that I will be more closely allied with the Senator from Wyoming on both of those issues than I have been on this one. But to the degree any expertise I might bring will be listened to, I certainly will be involved.

I thank the Chair.

The PRESIDING OFFICER. Is there further debate on the committee substitute, as amended?

There being no further debate, all those——

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Madam President, it is my understanding the Senator from Arizona, [Mr. MCCAIN], has some amendments, of which I have no knowledge. I suggest the absence of a quorum.

Mr. JOHNSTON. Madam President, if the Senator will withhold, as I understand it, aside from those amendments, is there a unanimous consent agreement covering this bill?

The PRESIDING OFFICER. There is a unanimous-consent agreement covering the bill.

Mr. JOHNSTON. Reserving of the Cohen amendment?

The PRESIDING OFFICER. There is a requirement that all amendments be relevant to either the subject matter of the bill or the committee substitute.

Mr. JOHNSTON. And when those amendments are offered, when will the bill be ripe for passage?

The PRESIDING OFFICER. No votes occur in relation to the bill prior to Tuesday.

When no Senator wishes to offer further amendments or debate, the bill will be put to a vote.

Mr. JOHNSTON. And so we could pass the bill today without a rollcall vote once all the amendments are considered?

The PRESIDING OFFICER. That is correct.

Mr. JOHNSTON. Madam President, I will suggest the absence of a quorum in a moment, but we invite Senators who have amendments to please contact us, and we will consider those at some time this afternoon. I hope we would be able to pass the bill without a rollcall vote later today. So we invite those Senators to please contact us, and we will consider their amendments.

Mr. WALLOP. Madam President, I will insist on a rollcall on the bill, I say to my friend. But more to the case, I think those Senators who have amendments owe it to the managers of the bill to show up shortly if they wish to have the opportunity to amend. I am perfectly willing to go to third reading on it. There is no reason for us to sit here and wait for people who have not the courtesy to come down when the floor is open and nothing else to do.

So I say to my friend that I will cooperate with him in moving the bill to third reading and putting the vote to tomorrow as it was suggested by the majority leader.

Mr. JOHNSTON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DORGAN). Without objection, it is so ordered.

AMENDMENT NO. 1554

(Purpose: To improve concessions policy affecting the National Park Service)

Mr. WALLOP. Mr. President, on behalf of the Senator from Arizona [Mr. MCCAIN], I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] for Mr. MCCAIN proposes an amendment numbered 1554.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, lines 24 and 25, between "Federal State and Local regulatory agencies", and "If the Secretary's performance", insert the following, ", and shall seek and consider the applicable views of park visitors and concession customers."

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, this has been cleared with both managers. It is a relatively simple requirement that the Secretary use the visitor reports in assessing the quality of the concession.

Mr. BUMPERS. We have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1554) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1555

(Purpose: To improve the concessions policy of the National Park Service)

Mr. WALLOP. Mr. President, I send another amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] for Mr. MCCAIN proposes an amendment numbered 1555.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, line 25, after "to the public at a park", insert the following, "except that the Secretary shall take all reasonable and appropriate steps to consider competing alternatives for such contract.".

Mr. WALLOP. Mr. President, this has also been cleared with managers on both sides, and it is a helpful and relatively simple amendment.

Mr. BUMPERS. We have no objection.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1555) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT

Mr. WALLOP. Mr. President, but for an amendment that we understand is coming from the Senator from Maine [Mr. COHEN], and the possibility of a budget point of order, that wraps up the known amendments to this bill.

I would, therefore, ask unanimous consent that they be the only amendments in order, those by the Senator from Maine and the budget point of order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. WALLOP. I would also ask that the staffs of those Senators to ask those Senators to come down here as a matter of courtesy and as a matter of convenience of the Senate. There is no reason for them to be carrying on.

And at some moment in time—I have talked with the committee chairman and the subcommittee chairman—we will move to third reading, notwithstanding that those amendments have not been offered. There is a limit to the patience that can be expected of the managers.

Mr. BUMPERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO VITIATE UNANIMOUS-CONSENT AGREEMENT

Mr. WALLOP. Mr. President, I ask unanimous consent that the unanimous-consent agreement entered into with regard to the amendment of the Senator from Maine and the budget point of order be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. WALLOP. Mr. President, let me try to restate the agreement, with the Senator from Arkansas paying heed. It is that should the budget point of order to be offered by the Senator from Colorado [Mr. BROWN] be sustained, necessarily a perfecting amendment to get rid of the budget point of order would be required, and, therefore, it should be included as part of the unanimous-consent agreement.

So, therefore, I ask unanimous consent that among the items to be in order is a budget point of order to be raised by the Senator from Colorado and a subsequent amendment to correct the deficiency should that point of order be sustained.

Mr. BUMPERS. And if I may add to the Senator's request, that a motion to waive the point of order would also be in order.

Mr. WALLOP. Would also be in order.

The PRESIDING OFFICER. The Chair will request of the Senator from Wyoming whether he is including in his unanimous-consent request second-degree amendments which are relevant.

Mr. WALLOP. In the instance of the budget point of order and perfecting amendment, second-degree amendments germane and directly related would be, and that the amendment from the Senator from Maine [Mr. COHEN] be the only other amendment in order and that that would be required to abide by the requirements of the consent order under which we are operating now, in other words, that it be relevant and germane.

There are two amendments, and that they be able to sustain second-degree amendments that are relevant and germane but that each of those be subject to the requirement established by this majority leader under the unanimous-consent agreement that those amendments be relevant and germane to the issue at hand.

The PRESIDING OFFICER. Is there objection to the Senator's unanimous-consent request?

Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask unanimous consent to proceed as in morning business for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I thank the Chair.

(The remarks of Mr. FORD pertaining to the introduction of S. 1953 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1556

(Purpose: To provide for review of concessions operations by the Comptroller General of the United States)

Mr. WALLOP. Mr. President, on behalf of the Senator from Maine [Mr. COHEN], I send an amendment to the desk regarding recordkeeping requirements and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for Mr. COHEN, proposes an amendment numbered 1556.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35, line 21, through page 36, line 5, strike section 14 in its entirety and insert in lieu thereof the following:

SEC. 14. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of five calendar years after the close of the business year for each concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the contracts or contracts involved.

Mr. COHEN. Mr. President, at a time when the public's confidence in the Government's ability to manage its financial affairs on behalf of the taxpayer is dismally low, Congress continues to fuel the public's cynicism by failing to make even the most simple common sense reforms that would enable the Government to act in a more business-like manner. Moreover, taxpayers have said they are willing to make sacrifices as long as the Government lives up to its end of the bargain and sends the message that Washington is serious about changing the way it does business.

Taxpayers have a reasonable expectation that, before we ask them to send another nickel to Washington, the Government demonstrate its ability to maximize revenue from Federal assets like public lands. Today, the public correctly observes that the Government too often fails to operate in a business-like manner.

As proof that the Federal Government is failing to operate efficiently, one only needs to examine how the Federal Government manages concessionaires operating on Federal land. From the parking deck at Arlington National Cemetery, to the elaborate Ahwahnee Hotel at Yosemite National Park, to the picturesque Scottsdale Tournament Players Club Golf Course in Arizona, the Government collects absurdly low rents and franchise fees from the operators of these facilities—who in turn have the exclusive right to promote goods and services on Federal property.

In some cases, the Government collects nothing. For example, at the Scottsdale golf course, the Federal Government leased property to the city of Scottsdale for 75 years. The city in turn subleased the land to a developer who built the golf course and an equestrian center. These facilities generated some $24 million in revenue over a 3-year period out of which the city of Scottsdale received 6.25 percent of the gross receipts or about $1.5 million. But for the next three quarters of a century, Uncle Sam will not see a dime.

There are literally hundreds of examples where concessionaires, thanks to the Government's poor management practices, are not paying fair market value for the use of Federal land and facilities, resulting in the Government's failure to collect $200 million in annual revenue. Although the legislation we are considering today, S. 208, the National Parks Concession Policy Reform Act, does not address the management of all Federal concessions, it is a good first step on the road to reforming Federal concession policy.

There is a clear need to reform the concession policy at our national parks. Current law almost always results in deals which are exceedingly good for the concessionaire operators, but are exceedingly bad for the taxpayer. These concessionaires should be made to compete for the exclusive right to offer goods and services to park visitors.

Specifically, competition should be based on: which goods and services the concessionaire is willing to provide; the prices charged for the goods and services offered; the concessionaire's ability and track record; and what the concessionaire is willing to pay the Government for what is, in effect, a monopoly over a ready-made customer base. By competing on this basis, I believe that the visitors to our national parks will benefit, service will improve, and the taxpayers will realize a better return on their investment in our National Parks.

While visitors to National Parks are paying high prices to concessionaires for their hotdogs, sodas, and parking, the Federal Government often gets little or nothing. For example, visitors to Alaska's Denali National Park spent on average about $17 per person on concessions—$16.72. At the same time the Government collected less than 14 cents from that $17 sale for the concessionaire's use of Federal buildings and the exclusive right to peddle its goods and services to the 504,000 people who visit Denali every year.

At the Grand Canyon, the concessionaire who runs the luxury hotel, charging between $102 and $252 a night, took in more than $63 million but paid the Government a mere $1,250 a month in rent and a $1.7 million franchise fee. The same concessionaire took in almost $5.3 million in sales from its operations at California's Death Valley National Monument and Arizona's Petrified Forest National Park. However, the Government's share was less than $125,000 or 2.3 percent. While, I do not find fault with the concessionaire for seizing a business opportunity, the Federal Government should not be in the business of enriching companies on the backs of the taxpayers.

There are many other examples. At California's Sequoia National Park, a concessionaire collected more than $11 million and paid the Government only about $82,000. At Montana's Glacier National Park one concessionaire took in more than $9 million, but paid the Government only about $133,000. The Lake Mead Resort in Nevada annually took in $4.3 million but paid the Government less than $135,000. Willow Beach Resort also at Lake Mead brought in more than $1.8 million but paid the Government just over $18,000. At Crater Lake National Park in Oregon, the Crater Lake Lodge collected about $3.6 million from park visitors and paid the Government a total of $695 in annual rent for the building and another $65,793 in franchise fees. Unfortunately, examples of these types of arrangements within the National Park Service are the rule rather than the exception.

In many cases, the States make out better than the Federal Government. State tax revenues often exceed revenues generated to the Federal Government in the form of rent and franchise fees. For example the concession operation at the Mount Vernon Inn generates more than $20,000 more for the State of Virginia in sales tax than it makes for the Federal Government.

Compared to the management of concessionaires at state parks, the Federal Government is literally giving the store away. According to a 1988 GAO report States receive an average concession fee of 12 percent of gross sales. This is in sharp contrast to the 2.6 percent the Federal Government received from its concessions 1992. Even if the Federal Government were simply to collect from concessionaires what States collect on average, we could collect an additional $60 million—or about 3½ times what the Park Service is currently receiving from its concession operations.

Yet the argument continues to be made that the taxpayer must subsidize Federal concession operations to ensure that reasonably priced concessions are available to visitors at our national parks. This argument holds little water. Low franchise fees do not necessarily translate into low prices for visitors to our national parks. More often, they simply mean higher profits for concessionaires. In fact, the concessionaire at Mount Vernon charges about 20 percent more than an ice cream store in nearby Alexandria for a 16-ounce coke. This 20 percent difference is significantly more than the 4 percent franchise fee the concessionaire pays to Government for the exclusive right to sell cokes to the 5.7 million annual visitors to Mount Vernon.

For the last several months, my staff on the subcommittee on oversight of Government Management has been investigating the Government's mismanagement of the concessions which operate on Federal land. Although we will be releasing the results of our investigation shortly, consideration of S. 208, the National Parks Concessions Policy Reform Act, provides an opportunity to share some of the subcommittee's findings and is a good first step in the effort to reform the Government's management of concessions.

Mr. President, I would like to commend Senator BUMPERS, Senator BENNETT and Senator JOHNSTON for their hard work in crafting a balanced proposal for reforming concessions policy at the National Park Service. This legislation is a good first step toward changing the management culture which for too long has resulted in the Government's failure to charge fair market rents to these concessionaires.

However, I am concerned that, to some degree, this legislation reinvents the wheel by requiring the Secretary of

the Interior to develop separate competitive procedures for soliciting proposals from concessionaires. For this reason, I considered offering an amendment to S. 208 which—consistent with the intent and substance of the bill—would have ensured that the competitive process for selecting concessionaires parallel existing law governing competition in all executive branch agencies. My amendment would have ensured that the Park Service competes its concessions contracts in the same manner as other Federal agencies competitively procure goods and services.

Mr. President, my amendment would have required the Secretary of the Interior to promulgate regulations for competing concessions contracts consistent with the principles of full and open competition as outlined in existing law. The adoption of the existing process would in no way preclude the Secretary from determining the source selection criteria used by the Department.

The existing process is in fact flexible. The existing competitive process as outlined in title III, section 303A.(a)(1)(C) of the Federal Property and Administrative Services Act of 1949, specifically states that the agency shall "develop specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired." It also requires at section 303A(b)(1), that, "each solicitation for sealed bids or competitive proposals * * * shall at a minimum include * * * a statement of (A) all significant factors * * * which the executive agency reasonably expects to consider in evaluating sealed bids of competitive proposals; and (B) the relative importance assigned to each of those factors." The current process as outlined in section 303B(d)(4) 41 U.S.C. 253b, goes on to say that when selecting the best proposal that the award shall be made to the responsible source whose proposal is most advantageous to the United States considering only price and other factors included in the solicitation. Clearly, the existing process provides sufficient flexibility to ensure that the intent of the bill is retained. Specifically, the Secretary, when writing the implementing regulations will have sufficient flexibility to ensure, citing language from S. 208, that "the consideration of revenue generated is subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates."

As the Senate author of the Competition in Contracting Act which became law in 1984, I have a keen interest in furthering a competitive environment for government contracting. This interest extends not only to the Government's acquisition of goods and services, but to the Government's contracts with concessionaires who bid for the right to provide goods and services to the millions of people who visit our national parks every year. The Competition in Contracting Act established statutory guidance for the process and procedures that agencies should adopt to ensure full and open competition. That is what this bill before us is about—competition.

However, I have decided not to offer my amendment because of concerns that its provisions will result in multiple referrals which would effectively kill S. 208. The effort to reform the Government's management of its concessions is far too important to have the effort thwarted although I do believe this amendment should be adopted. Nevertheless, in the interest in achieving meaningful reform, I have agreed to withhold my amendment.

Mr. President, I am pleased that my second amendment, which was adopted by the Senate, will increase the accountability of the Park Improvement Funds created by this legislation. Specifically, the amendment grants the General Accounting Office an explicit right to access all books and records associated with the management of these funds. Under current law, GAO has access to all books and records of any fund generated or created from money generated by concession operations. S. 208, would remove GAO's explicit right to access these books and records. My amendment explicitly grants GAO access to all pertinent books and records by including the language of the existing law to S. 208.

Mr. President, I am pleased that the Senate passed my amendment to maintain the accountability of concessionaire funds. And although I am not offering my amendment to direct the Secretary of the Interior to comply with the provisions of the Competition in Contracting Act, I urge my colleagues to support S. 208 so we may begin to reform concessions at the National Park Service and rethink in general, how the Government manages and oversees its concessionaires.

Mr. WALLOP. Mr. President, the Senator from Arkansas and I have looked at this amendment of the Senator from Maine with regard to reinstating the policy of the 1965 act and find it very useful. The minority is at least prepared to accept it.

Mr. BUMPERS. We have no objection to this amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1556) was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FORD). Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, members of Ansel Adams family operate the Best Studio/Ansel Adams Gallery at Yosemite National Park. It is my understanding this is the oldest family-owned business in the National Park System, operating since 1902. The family understands the preferential right of renewal is being eliminated, and is concerned about how the new selection criteria will affect them.

All of us are familiar with Ansel Adams' magnificent photographs of Yosemite. His name is nearly synonymous with the park. Given the family's long association and history with the park, it seems to me that all things being equal the National Park Service would want to keep the Ansel Adams Gallery even if the preferential right of renewal is eliminated.

Is it not the case that under this bill the Secretary of the Interior will consider the experience and related background of the person submitting a concession proposal, including past performance, and that the franchise fee will be subordinate to the objectives of protecting park resources and providing appropriate services?

Mr. JOHNSTON. The Senator from California is correct. Additionally, the bill allows the Secretary to consider secondary factors as he deems appropriate.

Mr. BUMPERS. Mr. President, I think we are ready to go to one final unanimous-consent agreement and third reading.

Does the Senator from Wyoming agree with that?

Mr. WALLOP. The Senator does.

Mr. BUMPERS. With that, Mr. President, I ask unanimous consent that the Senate vote on final passage of S. 208, the national park concessions reform bill, occur without any intervening action or debate at 2:30 p.m., on Tuesday, March 22, and that paragraph 4 of rule XII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS. Third reading, Mr. President.

The PRESIDING OFFICER. Without objection, the committee substitute is agreed to.

So the committee substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I am glad we got to the point of third reading. I reiterate my unhappiness with the bill and my understanding of where it is going. I have spoken my piece on it.

I would just say that the Senator from Arkansas and I, and the Senator from Utah, have been here for 1 hour and 45 minutes, while our colleague was downstairs having lunch and who decided, at the end of having lunch, not to offer an amendment that kept us waiting here for 1 hour and 45 minutes.

The Senator from Arkansas, in his opening remarks on the bill, talked about what an unhappy place the Senate has become. There are many reasons for that. But the lack of consideration becomes one that raises the level of unhappiness unnecessarily.

I am sorry that my colleagues had to sit and wait. I am sorry that it turned out that way. I am glad that we are to the point where we are on the bill.

But, for future reference, I think all of our colleagues would do well to try to remember the sensibilities of the rest of those serving with them during the course of the days. It is contentious enough around here, with partisanship and other kinds of things. A little consideration would go a long way toward making the Senate a less unhappy place than it currently is. I regret having said that, but I did feel compelled to take note of it.

The PRESIDING OFFICER. The Senator from Arkansas.

RECORD OPEN UNTIL 3 P.M.

Mr. BUMPERS. Mr. President, on behalf of the majority leader, I ask unanimous consent the RECORD remain open today until 3 p.m. for the introduction of legislation and statements.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BUMPERS. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 3 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1298 TO S. 1281, STATE DEPARTMENT AUTHORIZATION BILL, 1994

Mr. MCCAIN. Mr. President, during Senate consideration of the 1994 State Department authorization bill, I offered, and the Senate approved, an amendment concerning the People's Mujahidin of Iran [PMOI]. It has recently come to my attention that, due to an oversight, a statement that I intended to accompany the amendment was not printed in the CONGRESSIONAL RECORD. I offer the rationale for my amendment below as I would have offered it when the amendment was considered.

The findings of this amendment are facts and are attested to by the State Department. The operative clauses simply requires the State Department to examine the current activities of the PMOI for inclusion in its annual report on terrorism. If it decides not to include the PMOI, it must report its justification for not doing so and supply an unclassified report on the organization's current activities.

My principle concern is that the PMOI is permitted to freely lobby Congress without a clear understanding of the organization's history and current activities. All of us are concerned about human rights in Iran, and in many other areas of the world, but Members should have information at their disposal to consider the source. The Senate should not be in a position where it unknowingly, in the cause of human rights, supports an organization with a record of human rights abuses.

I offered this amendment only after extensive efforts to have a 1987 FBI report on the organization updated. Recognizing my own limits to pass judgment on the current activities of the PMOI, the intention of my amendment is to require such an update by the Department of State.

The American people deserve an official public accounting of any lobbyist with either a present or past connection to international terrorism. My efforts to gain an accounting of the PMOI have been vigorous and they will be equally vigorous should any other lobbyist with a history of terrorism come to my attention.

TRIBUTE TO ADELE GUTTENBERG

Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to the accomplishments of an outstanding constituent of mine, Mrs. Adele Guttenberg.

Mrs. Guttenberg has been more than just an ordinary advocate for the disabled in New Jersey. She worked tirelessly to gain support long before the onset of State efforts.

The mother of two severely handicapped children, Mrs. Guttenberg lobbied the Bergen County Board of Freeholders to ensure that all students, regardless of their age, receive the educational opportunities that they deserve. She has helped implement this in a number of ways, most notably by providing, with her husband, a 4-year scholarship to the New Jersey Institute of Technology for a disabled resident, and by her donations dedicated to removing architectural boundaries at the college.

As the cofounder of the Spectrum for Living, she expanded the opportunities for housing, day care, work shops, and quality of life. Recently, despite her officially nonprofessional status, Mrs. Guttenberg was chosen Woman of the Year by the Bergen County Business and Professional Women.

Mrs. Guttenberg is an exceptional example of an individual who has committed herself to improving the lives of those members of our society who face special challenges. I applaud her dedication, her generosity, and her spirit. She is an inspiration to us all.

ELECTION IN UKRAINE

Mr. LEVIN. Mr. President, the future of Ukraine is vital to the national security interests of the United States. The relationship between Ukraine and Russia, and the relationship between Ukraine and the United States will have a profound impact on the events of the 21st century.

That is why the upcoming election in Ukraine this Sunday, March 27, 1994, is so important not only to the people of Ukraine but to freedom-loving people everywhere. The stability of Ukraine and its ultimate, long-term independence may be profoundly influenced by not only the outcome of this Sunday's votes, but by the process, openness, and honesty of this election.

Ukraine has encountered many difficulties since the collapse of the Soviet Union. Inflation has surged, unemployment is at crisis levels, an energy crisis has curtailed industrial output, and internal and ethnic conflicts threaten. Ukraine is at a cross-roads as it goes to the polls this Sunday to elect a new parliament.

The elections are to replace the current, preindependence parliament that has been stymied in its attempts to deal with the vast and mounting problems facing the country as it tries to convert from a command to a free-market economy, and from a closed government to an open political democracy.

The popular support for reform and the Ukrainian people's trust in government will be tested this Sunday by the openness and honesty of the political process.

Mr. President, Ukraine faces many daunting challenges. Two fundamental measures of whether Ukraine will belong in the family of free and respectable nations and whether it adheres to its obligations under the Nuclear Nonproliferation Treaty and whether this Sunday's elections are truly free and fair. This world is watching, and the outcome will afffect more than the people of Ukraine.

IRRESPONSIBLE CONGRESS? HERE'S TODAY'S BOXSCORE

Mr. HELMS. Mr. President, as of the close of business on Friday, March 18, the Federal debt stood at $4,554,110,591,484.90, meaning that on a per capita basis, every man, woman, and child in America owes $17,468.04 as his or her share of that debt.

COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS ACT

The text of the bill [H.R. 3474] to reduce administrative requirements for insured depository institutions to the extent consistent with safe and sound banking practices, to facilitate the establishment of community development financial institutions, and for other purposes, as passed by the Senate on March 17, 1994, is as follows:

H.R. 3474

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Community Development, Credit Enhancement, and Regulatory Improvement Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

This subtitle may be cited as the "Community Development Banking and Financial Institutions Act of 1994".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) PURPOSE.—The purpose of this subtitle is to create a Community Development Financial Institutions Fund that will promote economic revitalization and community development through a program of investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

SEC. 103. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(2) AFFILIATE.—The term "affiliate" has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956.

(3) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "community development financial institution" means a person (other than an individual) that—

(i) has a primary mission of promoting community development;

(ii) serves an investment area or targeted population;

(iii) directly, through an affiliate, or through a community partnership, provides development services and equity investments or loans;

(iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and

(v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) QUALIFICATION OF AFFILIATES.—A subsidiary may only qualify as a community development financial institution if its parent company and the subsidiaries thereof (on a consolidated basis) also qualify as community development financial institutions.

(4) COMMUNITY PARTNER.—The term "community partner" means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958.

(5) COMMUNITY PARTNERSHIP.—The term "community partnership" means an agreement between a community development financial institution and a community partner to provide development services and loans or equity investments to an investment area or targeted population.

(6) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(7) DEVELOPMENT SERVICES.—The term "development services" means activities that promote community development and are integral to lending or investment activities, including—

(A) business planning;

(B) financial and credit counseling; and

(C) marketing and management assistance.

(8) INSURED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term "insured community development financial institution" means any community development financial institution that is an insured depository institution or an insured credit union.

(9) INSURED CREDIT UNION.—The term "insured credit union" has the same meaning as in section 101(7) of the Federal Credit Union Act.

(10) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(11) INVESTMENT AREA.—The term "investment area" means a geographic area that—

(A)(i) meets objective criteria of economic distress developed by the Community Development Financial Institutions Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, lag in population growth, and extent of blight and disinvestment; and

(ii) has significant unmet needs for loans or equity investments;

(B) is located in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986;

(C) is located on an Indian reservation, as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(10) of the Indian Child Welfare Act of 1978; or

(D) is located in an area which is not a metropolitan statistical area and which has experienced a decrease in population of not less than 10 percent (as determined in the most recent decennial census) between 1980 and 1990.

(12) LOW-INCOME.—The term "low-income" means having an income, adjusted for family size, of not more than—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(13) PARENT COMPANY.—The term "parent company" means any company that directly or indirectly controls another company.

(14) SUBSIDIARY.—The term "subsidiary" has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(15) TARGETED POPULATION.—The term "targeted population" means low-income persons or persons who otherwise lack adequate access to loans or equity investments.

SEC. 104. ESTABLISHMENT OF NATIONAL FUND FOR COMMUNITY DEVELOPMENT BANKING.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a corporation to be known as the Community Development Financial Institutions Fund (hereafter

in this subtitle referred to as the "Fund") that shall have the duties and responsibilities specified by this subtitle. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) WHOLLY OWNED GOVERNMENT CORPORATION.—The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subtitle.

(b) MANAGEMENT OF FUND.—

(1) APPOINTMENT OF ADMINISTRATOR AND DEPUTY ADMINISTRATOR.—The management of the Fund shall be vested in an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall not engage in any other business or employment during service as the Administrator. The President may appoint a Deputy Administrator by and with the advice and consent of the Senate. The Deputy Administrator shall serve as the acting Administrator of the Fund during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(2) CHIEF FINANCIAL OFFICER.—The Administrator shall appoint a chief financial officer who shall oversee the financial management activities of the Fund.

(3) OTHER OFFICERS.—The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

(c) GENERAL POWERS.—In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subtitle;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subtitle;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be deemed necessary or appropriate to the conduct of activities authorized under this subtitle;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subtitle and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) ADVISORY BOARD.—

(1) ESTABLISHMENT.—The Administrator shall establish an advisory board to be known as the Community Development Advisory Board (hereafter in this subtitle referred to as the "Board") in accordance with the provisions of the Federal Advisory Committee Act.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Board shall consist of 5 private citizens who, collectively—

(i) represent community groups whose constituencies include targeted populations or residents of investment areas;

(ii) represent local or regional government interests;

(iii) have expertise in the operations and activities of insured depository institutions; and

(iv) have expertise in community development and lending.

(B) REPRESENTATION.—Each of the categories described in clauses (i) through (iv) of subparagraph (A) shall be represented by not less than 1 member of the Board.

(3) BOARD FUNCTION.—It shall be the function of the Board to advise the Administrator on the policies of the Fund. The Board shall not advise the Administrator on the granting or denial of any particular application.

(4) TERMS OF MEMBERS.—

(A) IN GENERAL.—Each member of the Board shall serve for a term of 4 years.

(B) VACANCIES.—Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is appointed and qualified.

(5) CHAIRPERSON.—The Administrator shall appoint a chairperson from among the members of the Board.

(6) MEETINGS.—The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) REIMBURSEMENT FOR EXPENSES.—The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(8) COSTS AND EXPENSES.—The Fund shall provide to the Board all necessary staff and facilities.

(e) CONFORMING AMENDMENTS.—Section 9101(3) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (B) through (M) as subparagraphs (C) through (N), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) the Community Development Financial Institutions Fund;".

(f) GOVERNMENT CORPORATION CONTROL ACT EXEMPTION.—Section 9107(b) of title 31, United States Code, shall not apply to deposits of the Fund made pursuant to section 108.

(g) LIMITATION OF FUND AND FEDERAL LIABILITY.—The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subtitle shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia.

(h) PROHIBITION ON ISSUANCE OF SECURITIES.—The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) COMPENSATION.—Title 5, United States Code, is amended—

(1) in section 5314, by adding at the end the following:

"Administrator of the Community Development Financial Institutions Fund."; and

(2) in section 5315, by adding at the end the following:

"Deputy Administrator of the Community Development Financial Institutions Fund.".

(j) ASSISTED INSTITUTIONS NOT UNITED STATES INSTRUMENTALITIES.—A community development financial institution or other organization that receives assistance pursuant to this subtitle shall not be deemed to be an agency, department, or instrumentality of the United States.

SEC. 105. APPLICATIONS FOR ASSISTANCE.

(a) FORM AND PROCEDURES.—An application for assistance under this subtitle shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) MINIMUM REQUIREMENTS.—Except as provided in sections 106 and 115, the Fund shall require an application—

(1) to establish that the applicant is, or will be, a community development financial institution;

(2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subtitle, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subtitle and the assistance agreement; and

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant—

(A) has a record of success in serving investment areas or targeted populations;

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding subsection (b)(1), in the case of a State in which there is no existing community development financial institution in operation on the date of enactment of this Act, an applicant may be an agency or instrumentality of a State government if—

(A) such an entity has a primary mission of promoting community development;

(B) any assistance received is used to establish a community development financial institution;

(C) there is no nongovernment entity within the State that possesses the capacity to become a community development financial institution;

(D) no other agency or instrumentality of the same State has received assistance; and

(E) assistance received will not reduce the amount of State funds that otherwise would be appropriated to such an entity.

(2) MAJORITY OWNERSHIP.—An agency or instrumentality eligible to apply pursuant to paragraph (1) may own a majority of the voting stock of a community development financial institution if it demonstrates that there is a lack of nonpublic sources of capital available to establish a community development financial institution.

(3) AMOUNT OF ASSISTANCE.—No State agency or instrumentality and a community development financial institution, a majority of the shares of which are owned by such an agency or instrumentality pursuant to this subsection, may cumulatively receive assistance exceeding the amount set forth under section 108(d)(1).

(d) PREAPPLICATION OUTREACH PROGRAM.—The Fund may operate an outreach program to identify and provide information to potential applicants.

SEC. 106. COMMUNITY PARTNERSHIPS.

(a) APPLICATION.—An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) APPLICATION REQUIREMENTS.—The Fund shall require a community partnership application—

(1) to meet the minimum requirements established for community development financial institutions under section 105(b), except that the criteria specified in paragraphs (1) and (2)(A) of section 105(b) shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) SELECTION CRITERIA.—The Fund shall consider a community partnership application based on the selection criteria set out in section 107.

(d) LIMITATION ON DISTRIBUTION OF ASSISTANCE.—Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate thereof.

(e) OTHER REQUIREMENTS AND LIMITATIONS.—All other requirements and limitations imposed by this subtitle on a community development financial institution assisted under this subtitle shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

SEC. 107. SELECTION OF INSTITUTIONS.

(a) SELECTION CRITERIA.—Except as provided in section 115, the Fund shall, in its sole discretion, select applicants for assistance based on—

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the proposed management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;

(7) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;

(8) whether the applicant is, or will become, an insured depository institution or an insured credit union;

(9) whether the applicant is, or will be, located—

(A) in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986;

(B) on an Indian reservation, as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(10) of the Indian Child Welfare Act of 1978; or

(C) in a community that has experienced a sudden and significant loss in total employment since the 1990 census or a major dislocation in its primary employment base.

(10) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;

(11) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and

(12) other factors (such as the extent to which the applicant has strong ties to the community that it will serve) deemed to be appropriate by the Fund.

(b) GEOGRAPHIC DIVERSITY.—The Fund shall assist a geographically diverse group of applicants, including an appropriate mix of applicants from urban, rural, and Native American communities.

SEC. 108. ASSISTANCE PROVIDED BY THE FUND.

(a) FORMS OF ASSISTANCE.—

(1) IN GENERAL.—The Fund may provide—

(A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and

(B) technical assistance—

(i) directly;

(ii) through grants; or

(iii) by contracting with organizations that possess expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subtitle.

(2) EQUITY INVESTMENTS.—The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(3) DEPOSITS.—Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) LIMITATIONS ON OBLIGATIONS.—Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their costs, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) USES OF FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Financial assistance made available under this subtitle may be used by assisted institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership opportunities shall only be used for activities and lending products that serve low-income people and are not provided by other lenders in the area; and

(F) other businesses and activities deemed appropriate by the Fund.

(2) LIMITATIONS.—No assistance made available under this subtitle may be expended by a community development financial institution (or an organization receiving assistance under section 115) to pay any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement (as such terms are defined in section 1352 of title 31, United States Code).

(c) USES OF TECHNICAL ASSISTANCE.—Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(d) AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—The Fund may provide not more than $5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its affiliates.

(2) EXCEPTION.—Notwithstanding the limitations in paragraph (1), in the case of an existing community development financial institution that proposes to serve an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, the Fund may provide not more than $7,500,000 of assistance to a community development financial institution and its affiliates, in the aggregate, during any 3-year period, of which not less than $2,500,000 shall be used to establish affiliates to serve the new investment area or targeted population.

(3) TIMING OF ASSISTANCE.—Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) MATCHING REQUIREMENTS.—

(1) IN GENERAL.—Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) EXCEPTION.—In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent;

(B) permitting such applicant to satisfy not more than 60 percent of the matching requirement through use of assistance made available pursuant to—

(i) section 106 of the Housing and Community Development Act of 1974;

(ii) section 623(c)(1) of the Community Economic Development Act of 1981; or

(iii) section 310B(c) of the Consolidated Farm and Rural Development Act; or

(C) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund if such applicant—

(i) has total assets of less than $100,000;

(ii) serves nonmetropolitan areas; and

(iii) is not requesting more than $25,000 in assistance.

(3) LIMITATION.—Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) CONSTRUCTION OF "FEDERAL FUNDS".—For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974, funds provided pursuant to such Act shall be considered to be Federal funds, except as provided in paragraph (2)(B).

(f) TERMS AND CONDITIONS.—

(1) SOUNDNESS OF UNREGULATED INSTITUTIONS.—The Fund shall—

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subtitle is financially and managerially sound and maintains appropriate internal controls; and

(B) require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 112(a)(4).

(2) CONSULTATION WITH THE APPROPRIATE BANKING REGULATOR.—Prior to providing assistance to an insured community development financial institution, the Fund shall consult with the appropriate Federal banking agency.

(3) ASSISTANCE AGREEMENT.—

(A) IN GENERAL.—Before providing any assistance under this subtitle, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subtitle.

(B) PERFORMANCE GOALS.—Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 105(b)(2). Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) SANCTIONS.—The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subtitle, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

(i) revoke approval of the application;

(ii) terminate or reduce future assistance;

(iii) require repayment of assistance;

(iv) require changes to the performance goals imposed pursuant to subparagraph (B);

(v) bar an applicant from reapplying for assistance from the Fund;

(vi) require changes to the strategic plan submitted pursuant to section 105(b)(2); and

(vii) take such other actions as the Fund deems appropriate.

(D) INSURED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS.—In the case of an insured community development financial institution, the Fund shall notify the appropriate Federal banking agency not less than 15 days before imposing sanctions pursuant to this paragraph and shall not impose such sanctions if the agency disapproves, with an explanation in writing, during that 15-day period.

(E) NATIVE AMERICAN INSTITUTIONS.—In the case of a community development financial institution which serves an investment area described in paragraph (11)(C) of section 103, or an Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act, the Fund shall consult with the applicable tribal government in evaluating the institution's compliance with the performance goals established pursuant to subparagraph (B).

(g) AUTHORITY TO SELL EQUITY INVESTMENTS AND LOANS.—The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subtitle until the performance goals related to the investment or loan have been met.

(h) NO AUTHORITY TO LIMIT SUPERVISION AND REGULATION.—Nothing in this subtitle shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.

SEC. 109. COMMUNITY DEVELOPMENT TRAINING.

(a) IN GENERAL.—The Fund may operate a training program to increase the capacity and expertise of community development financial institutions and other members of the financial services industry to undertake community development activities (hereafter in this subtitle referred to as the "training program").

(b) PROGRAM ACTIVITIES.—The training program shall provide educational programs to assist community development financial institutions and other members of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and implementing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(c) PARTICIPATION.—The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(d) CONTRACTING.—The Fund may offer the training described in this section directly or through a contract with other organizations. The Fund may contract to provide the training with organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subtitle.

(e) FEES.—The Fund, as it deems appropriate, may charge fees for participation in training services to offset the cost of providing the services.

SEC. 110. ENCOURAGEMENT OF PRIVATE ENTITIES.

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest that will complement the activities of the Fund in carrying out the purpose of this subtitle. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subtitle. Any such entity shall be managed exclusively by persons not employed by the Federal Government or any agency or instrumentality thereof.

SEC. 111. CLEARINGHOUSE FUNCTION.

(a) ESTABLISHMENT.—The Fund may establish and maintain an information clearinghouse in coordination with other Federal departments or agencies and community development financial institutions to—

(1) collect, compile, and analyze information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving these institutions; and

(2) provide information on financial, technical, and management assistance, data on the activities of community development financial institutions, regulations, and other information that may promote the purposes of this subtitle.

(b) COSTS.—The cost of maintaining the clearinghouse shall be shared equally by the Fund and each department or agency involved in maintaining the clearinghouse.

SEC. 112. RECORDKEEPING, REPORTS, AND AUDITS.

(a) RECORDKEEPING.—

(1) IN GENERAL.—A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed, as may be necessary to disclose the manner in which any assistance under this subtitle is used and to demonstrate compliance with the requirements of this subtitle.

(2) USER PROFILE INFORMATION.—The Fund shall require each community development financial institution receiving assistance under this subtitle to compile and maintain data on the gender, race, ethnicity, national origin, and other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(3) ACCESS TO RECORDS.—The Fund shall have access on demand, for the purpose of determining compliance with this subtitle, to any records of a community development financial institution that receives assistance from the Fund.

(4) REVIEW.—Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(5) REPORTING.—

(A) ANNUAL REPORTS.—The Fund shall require each community development financial institution receiving assistance under this subtitle to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subtitle in such form and manner as the Fund shall specify.

(B) AVAILABILITY OF REPORTS.—The Fund, after deleting or redacting any material, as appropriate to protect privacy or proprietary interests, shall make such reports available for public inspection.

(b) ANNUAL REPORT BY THE FUND.—The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions assisted pursuant to this subtitle, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (d).

(c) STUDIES.—

(1) OPTIONAL STUDIES.—The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subtitle and to facilitate investment in distressed communities. The findings of any studies conducted pursuant to this paragraph shall be included in the report required by subsection (b).

(2) NATIVE AMERICAN LENDING STUDY.—

(A) STUDY.—The Fund shall conduct a study on lending and investment practices on Indian reservations and other land held in trust by the United States Government. Such study shall—

(i) identify barriers to private financing on such lands; and

(ii) identify the impact of such barriers on access to capital and credit for Native American populations.

(B) CONSULTATION WITH PRIVATE SECTOR.—In conducting the study under subparagraph (A),

the Fund shall consult with tribal governments, private citizens, and organizations that possess expertise in lending and community development issues confronted by Native American populations.

(C) REPORT.—Not later than 18 months after the date of enactment of this Act, the Fund shall submit a report to the President and the Congress that—

(i) contains the findings of the study conducted under subparagraph (A);

(ii) recommends any necessary statutory and regulatory changes to existing Federal programs; and

(iii) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

(3) INVESTMENT, GOVERNANCE, AND ROLE OF FUND.—Thirty months after the appointment and qualification of the Administrator, the Comptroller General shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

(d) EXAMINATION AND AUDIT.—The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, United States Code, except that audits required by section 9105(a) of such title shall be performed annually.

SEC. 113. INVESTMENT OF RECEIPTS AND PROCEEDS.

(a) ESTABLISHMENT OF ACCOUNT.—Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 108, and any fees received pursuant to section 109(e) shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as "the account") established to carry out the purpose of this subtitle.

(b) INVESTMENTS.—Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

(c) AVAILABILITY.—Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.

SEC. 114. INSPECTOR GENERAL.

(a) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App. 11) is amended—

(1) in paragraph (1), by inserting "; the Administrator of the Community Development Financial Institutions Fund;" before "and the chief"; and

(2) in paragraph (2), by inserting "the Community Development Financial Institutions Fund," after "the Agency for International Development,".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for the operation of the Office of Inspector General established by the amendments made by subsection (a).

SEC. 115. CAPITALIZATION ASSISTANCE TO ENHANCE LIQUIDITY.

(a) ASSISTANCE.—

(1) IN GENERAL.—The Fund may provide assistance for the purpose of providing capital to organizations that will purchase loans or otherwise enhance the liquidity of community development financial institutions if—

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds—

(i) from sources other than the Federal Government;

(ii) on the basis of not less than $1 for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

(2) LIMITATION ON OTHER ASSISTANCE.—An organization that receives assistance under this section may not receive other financial or technical assistance under this subtitle.

(b) SELECTION.—The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 105(b) and 107, as appropriate.

(c) AMOUNT OF ASSISTANCE.—The Fund may provide a total of not more than $5,000,000 of assistance to an organization under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

(d) AUDIT AND REPORT REQUIREMENTS.—

(1) IN GENERAL.—Organizations that receive assistance from the Fund in accordance with this section shall—

(A) submit to the Fund not less than once in every 18-month period, financial statements audited by an independent certified public accountant;

(B) submit an annual report on its activities; and

(C) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(2) ACCESS.—The Fund shall have access on demand, for the purposes of determining compliance with this section, to any records of such organizations.

(e) LIMITATIONS ON LIABILITY.—

(1) LIABILITY OF FUND.—The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, territory, or the District of Columbia.

(2) LIABILITY OF GOVERNMENT.—This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

(f) USE OF PROCEEDS.—Any proceeds from the sale of loans to an organization assisted under this section shall be used by the seller for community development purposes.

SEC. 116. COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS.

(a) REPEAL.—Section 120 of the Federal Credit Union Act (12 U.S.C. 1766) is amended by striking subsection (k).

(b) REVOLVING LOAN FUND.—The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended by inserting after section 129 the following new section:

"SEC. 130. COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS.

"(a) IN GENERAL.—The Board may exercise the authority granted to it by the Community Development Credit Union Revolving Loan Fund Transfer Act, including any additional appropriation made or earnings accrued, subject only to this section and to regulations prescribed by the Board.

"(b) INVESTMENT.—The Board may invest any idle Fund moneys in United States Treasury securities. Any interest accrued on such securities shall become a part of the Fund.

"(c) LOANS.—The Board may require that any loans made from the Fund be matched by increased shares in the borrower credit union.

"(d) INTEREST.—Interest earned by the Fund may be allocated by the Board for technical assistance to community development credit unions, subject to an appropriations Act.

"(e) DEFINITION.—As used in this section, the term 'Fund' means the Community Development Credit Union Revolving Loan Fund.".

SEC. 117. REGULATIONS.

Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall issue such regulations as may be necessary to carry out this subtitle.

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this subtitle, there are authorized to be appropriated to the Fund, to remain available until expended—

(1) $60,000,000 for fiscal year 1994;
(2) $104,000,000 for fiscal year 1995;
(3) $107,000,000 for fiscal year 1996; and
(4) $111,000,000 for fiscal year 1997.

(b) ADMINISTRATIVE EXPENSES.—Of amounts authorized to be appropriated to the Fund—

(1) not more than $5,500,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund; and

(2) not more than $50,000 may be used by the Fund in each fiscal year to provide for administrative costs and expenses described in section 104(d)(8).

(c) COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.—There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund—

(1) $2,000,000 for fiscal year 1994;
(2) $1,000,000 for fiscal year 1995;
(3) $1,000,000 for fiscal year 1996; and
(4) $1,000,000 for fiscal year 1997.

(d) CAPITALIZATION ASSISTANCE.—Not more than 5 percent of the amounts authorized to be appropriated under subsection (a) may be used as provided in section 115.

(e) BUDGETARY TREATMENT.—Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 601 of the Congressional Budget Act of 1974, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

Subtitle B—Home Ownership and Equity Protection

SEC. 151. CONSUMER PROTECTIONS FOR HIGH COST MORTGAGES.

(a) DEFINITION.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

"(aa)(1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

"(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the rate of interest on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the loan is consummated; or

"(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

"(i) 8 percent of the total loan amount; or

"(ii) $400.

"(2) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

"(3) For purposes of paragraph (1)(B), points and fees shall include—

"(A) all items included in the finance charge except interest and the time-price differential;

"(B) all compensation paid to mortgage brokers;

"(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes), unless—

"(i) the charge is reasonable;

"(ii) the creditor receives no direct or indirect compensation; and

"(iii) the charge is paid to a third party unaffiliated with the creditor; and

"(D) such other charges as the Board determines to be appropriate.".

(b) MATERIAL DISCLOSURES.—Section 103(u) of the Truth in Lending Act (15 U.S.C. 1602(u)) is amended—

(1) by striking "and the due dates" and inserting "the due dates"; and

(2) by inserting before the period ", and the disclosures required by section 129(a)".

(c) DEFINITION OF CREDITOR CLARIFIED.—Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by adding at the end the following: "Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title.".

(d) DISCLOSURES REQUIRED AND CERTAIN TERMS PROHIBITED.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 128 the following new section:

"SEC. 129. REQUIREMENTS FOR CERTAIN MORTGAGES.

"(a) DISCLOSURES.—

"(1) SPECIFIC DISCLOSURES.—In addition to other disclosures required under this title, for each mortgage referred to in section 103(aa), the creditor shall provide the following disclosures in conspicuous type size:

"(A) 'You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.'

"(B) 'If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.'.

"(2) ANNUAL PERCENTAGE RATE.—In addition to the disclosures required under paragraph (1), the creditor shall disclose—

"(A) the annual percentage rate of the loan and the amount of the regular monthly payment; or

"(B) in the case of a variable rate loan, the annual percentage rate of the loan, a statement that the interest rate and monthly payment may increase, and the amount of the maximum possible monthly payment.

"(b) TIME OF DISCLOSURES.—

"(1) IN GENERAL.—The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

"(2) NEW DISCLOSURES REQUIRED.—After providing the disclosures required by this section, a creditor may not change the terms of the loan if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

"(3) MODIFICATIONS.—The Board may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

"(c) NO PREPAYMENT PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (4), a mortgage referred to in section 103(aa) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal of the loan prior to the date on which such principal is due. If the date of maturity of a mortgage referred to in section 103(aa) is accelerated for any reason, and the consumer is entitled to a rebate of interest, computation of the rebate amount shall comply with paragraph (2). No such mortgage shall provide for a default interest rate that is higher than the interest rate provided by the note for the loan prior to default.

"(2) REBATE COMPUTATION.—For purposes of this subsection, any method of computing rebates of interest that is less favorable to the consumer than the actuarial method (as defined in section 933 of the Housing and Community Development Act of 1992) using simple interest is a prepayment penalty.

"(3) EXCEPTION.—A mortgage referred to in section 103(aa) may include terms under which a consumer is required to pay not more than 1 month's interest as a penalty if the consumer prepays the principal of the loan within 1 year of origination.

"(d) NO BALLOON PAYMENTS.—A mortgage referred to in section 103(aa) having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

"(e) NO NEGATIVE AMORTIZATION.—A mortgage referred to in section 103(aa) may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

"(f) NO PREPAID PAYMENTS.—A mortgage referred to in section 103(aa) may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

"(g) CONSEQUENCE OF FAILURE TO COMPLY.—Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.

"(h) DEFINITION.—For purposes of this section, the term 'affiliate' has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956.

"(i) DISCRETIONARY REGULATORY AUTHORITY OF BOARD.—

"(1) EXEMPTIONS.—The Board may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (c) through (f), if the Board finds that the exemption—

"(A) is in the interest of the borrowing public; and

"(B) will apply only to products that maintain and strengthen home ownership and equity protection.

"(2) PROHIBITIONS.—The Board, by regulation or order, shall prohibit acts or practices in connection with—

"(A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and

"(B) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.".

(e) CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 2 of the Truth in Lending Act is amended by striking the item relating to section 129 and inserting the following:

"129. Requirements for certain mortgages.".

(2) TRUTH IN LENDING ACT.—Section 105(a) of the Truth in Lending Act (15 U.S.C. 1604(a)) is amended in the second sentence, by striking "These" and inserting "Except in the case of a mortgage referred to in section 103(aa), these".

SEC. 152. CIVIL LIABILITY.

(a) DAMAGES.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) by striking "and" at the end of paragraph (2)(B);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) in the case of a failure to comply with any requirement under section 129, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.".

(b) STATE ATTORNEY GENERAL ENFORCEMENT.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by adding at the end the following: "An action to enforce a violation of section 129 may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 108 and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

"(1) intervene in the action;

"(2) upon intervening—

"(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

"(B) be heard on all matters arising in the action; and

"(3) file a petition for appeal.".

(c) ASSIGNEE LIABILITY.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following new subsection:

"(d) RIGHTS UPON ASSIGNMENT OF CERTAIN MORTGAGES.—

"(1) IN GENERAL.—Any person who purchases or is otherwise assigned a mortgage referred to in section 103(aa) shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the loan documentation required by this title, that the mortgage was in fact a mortgage referred to in section 103(aa). The preceding sentence does not affect a consumer's rights under sections 125, 130, or any other provision of this title.

"(2) LIMITATION ON DAMAGES.—Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed—

"(A) with respect to actions based upon a violation of this title, the amount specified in section 130; and

"(B) with respect to all other causes of action, the sum of—

"(i) the amount of all remaining indebtedness; and

"(ii) the total amount paid by the consumer in connection with the transaction.

"(3) OFFSET.—The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

"(4) NOTICE.—Any person who sells or otherwise assigns a mortgage referred to in section 103(aa) shall include a prominent notice of the potential liability under this subsection as determined by the Board.".

SEC. 153. REVERSE MORTGAGE DISCLOSURE.

(a) DEFINITION OF REVERSE MORTGAGE.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

"(bb) The term 'reverse mortgage transaction' means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling—

"(1) securing one or more advances; and

"(2) with respect to which the payment of any principal, interest, and shared appreciation is due and payable (other than in the case of default) only after—

"(A) the transfer of the dwelling;

"(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

"(C) the death of the consumer.".

(b) DISCLOSURE.—Chapter 2 of title I of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

"SEC. 138. REVERSE MORTGAGES.

"(a) IN GENERAL.—In addition to the disclosures required under this title, for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future loan balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include—

"(1) statements of the annual interest rates for not less than 3 projected appreciation rates and not less than 3 loan periods, as determined by the Board, including—

"(A) a short-term reverse mortgage;

"(B) a term equaling the actuarial life expectancy of the consumer; and

"(C) such longer term as the Board deems appropriate; and

"(2) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed a loan application.

"(b) PROJECTED TOTAL COST.—In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a), the creditor shall take into account—

"(1) any shared appreciation that the lender will, by contract, be entitled to receive;

"(2) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;

"(3) all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and

"(4) any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).".

(c) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 137 the following:

"138. Reverse mortgages.".

SEC. 154. REGULATIONS; EFFECTIVE DATE.

(a) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle, and the amendments made by this subtitle, shall apply to every mortgage referred to in section 103(aa) of the Truth in Lending Act (as added by section 151(a) of this Act) consummated on or after the date which is 60 days after the promulgation of final regulations under subsection (a).

TITLE II—SMALL BUSINESS CAPITAL FORMATION

Subtitle A—Small Business Loan Securitization

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "Small Business Loan Securitization and Secondary Market Enhancement Act of 1994".

SEC. 202. SMALL BUSINESS RELATED SECURITY.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraph:

"(53)(A) The term 'small business related security' means a security that is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization, and either—

"(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

"(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

"(B) For purposes of this paragraph—

"(i) an 'interest in a promissory note or a lease of personal property' includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

"(ii) the term 'small business concern' has the same meaning as in section 3 of the Small Business Act;

"(iii) the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

"(iv) the term 'insured credit union' has the same meaning as in section 101 of the Federal Credit Union Act.".

SEC. 203. APPLICABILITY OF MARGIN REQUIREMENTS.

Section 7(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(g)) is amended by inserting "or a small business related security" after "mortgage related security".

SEC. 204. BORROWING IN THE COURSE OF BUSINESS.

Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) is amended in the last sentence by inserting "or a small business related security" after "mortgage related security".

SEC. 205. SMALL BUSINESS RELATED SECURITIES AS COLLATERAL.

Clause (ii) of section 11(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(d)(1)) is amended by inserting "or any small business related security" after "mortgage related security".

SEC. 206. INVESTMENT BY DEPOSITORY INSTITUTIONS.

(a) HOME OWNERS' LOAN ACT AMENDMENT.—Section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)) is amended by adding at the end the following new subparagraph:

"(S) SMALL BUSINESS RELATED SECURITIES.—Investments in small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Director may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.".

(b) CREDIT UNIONS.—Section 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(15)) is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by inserting "or" at the end; and

(3) by adding at the end the following new subparagraph:

"(C) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Board may prescribe, including regulations prescribing the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both;".

(c) NATIONAL BANKING ASSOCIATIONS.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended in the last sentence in the first full paragraph of paragraph Seven, by striking "or (B) are mortgage related securities" and inserting the following: "(B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities".

SEC. 207. PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), or".

(b) OBLIGATIONS OF THE UNITED STATES.—Section 106(a)(2) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(a)(2)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), or".

(c) PREEMPTION OF STATE LAWS.—Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1(c)) is amended—

(1) in the first sentence, by striking "or that" and inserting ", that"; and

(2) by inserting ", or that are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934)" before "shall be exempt".

(d) IMPLEMENTATION.—Section 106 of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r–1) is amended by adding at the end the following new subsection:

"(d) IMPLEMENTATION.—

"(1) LIMITATION.—The provisions of subsections (a) and (b) concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partner-

ship, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after the date of enactment of this subsection, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

"(2) STATE REGISTRATION OR QUALIFICATION REQUIREMENTS.—Any State may, not later than 7 years after the date of enactment of this subsection, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.".

SEC. 208. INSURED DEPOSITORY INSTITUTION CAPITAL REQUIREMENTS FOR TRANSFERS OF SMALL BUSINESS OBLIGATIONS.

(a) ACCOUNTING PRINCIPLES.—The accounting principles applicable to the transfer of a small business loan or a lease of personal property with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles.

(b) CAPITAL AND RESERVE REQUIREMENTS.—With respect to the transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, each qualified insured depository institution shall—

(1) establish and maintain a reserve equal to an amount sufficient to meet the reasonable estimated liability of the institution under the recourse arrangement; and

(2) include, for purposes of applicable capital standards and other capital measures, only the amount of the retained recourse in the risk-weighted assets of the institution.

(c) QUALIFIED INSTITUTIONS CRITERIA.—An insured depository institution is a qualified insured depository institution for purposes of this section if, without regard to the accounting principles or capital requirements referred to in subsections (a) and (b), the institution is—

(1) well capitalized; or

(2) with the approval, by regulation or order, of the appropriate Federal banking agency, adequately capitalized.

(d) AGGREGATE AMOUNT OF RECOURSE.—The total outstanding amount of recourse retained by a qualified insured depository institution with respect to transfers of small business loans and leases of personal property under subsections (a) and (b) shall not exceed—

(1) 15 percent of the risk-based capital of the institution; or

(2) such greater amount, as established by the appropriate Federal banking agency by regulation or order.

(e) INSTITUTIONS THAT CEASE TO BE QUALIFIED OR EXCEED AGGREGATE LIMITS.—If an insured depository institution ceases to be a qualified insured depository institution or exceeds the limits under subsection (d), this section shall remain applicable to any transfers of small business loans or leases of personal property that occurred during the time that the institution was qualified and did not exceed such limit.

(f) PROMPT CORRECTIVE ACTION NOT AFFECTED.—The capital of an insured depository institution shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act.

(g) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act each appropriate Federal banking agency shall promulgate final regulations implementing this section.

(h) ALTERNATIVE SYSTEM PERMITTED.—

(1) IN GENERAL.—At the discretion of the appropriate Federal banking agency, this section shall not apply if the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans and leases of personal property with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b).

(2) EXISTING TRANSACTIONS NOT AFFECTED.—Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of small business loans and leases of personal property with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

(i) DEFINITIONS.—For purposes of this section—

(1) the term "adequately capitalized" has the same meaning as in section 38(b) of the Federal Deposit Insurance Act;

(2) the term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(3) the term "capital standards" has the same meaning as in section 38(c) of the Federal Deposit Insurance Act;

(4) the term "Federal banking agencies" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(5) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(6) the term "other capital measures" has the meaning as in section 38(c) of the Federal Deposit Insurance Act;

(7) the term "recourse" has the meaning given to such term under generally accepted accounting principles;

(8) the term "small business" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act; and

(9) the term "well capitalized" has the same meaning as in section 38(b) of the Federal Deposit Insurance Act.

SEC. 209. TRANSACTIONS IN SMALL BUSINESS RELATED SECURITIES BY EMPLOYEE BENEFIT PLANS.

(a) PROHIBITED TRANSACTION EXEMPTION.—The Secretary of Labor, in consultation with the Secretary of the Treasury, may exempt transactions involving small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934, as added by section 202 of this Act) pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(a)) and section 4975(c)(2) of the Internal Revenue Code of 1986.

(b) CONSIDERATION OF EXEMPTION REQUESTS.—The Secretary of Labor shall consider any request for exemption under subsection (a) within a reasonable period of time after receipt of such request.

SEC. 210. SENSE OF THE SENATE ON TAXATION OF SMALL BUSINESS LOAN INVESTMENT CONDUITS.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the taxation of a small business loan investment conduit and the holder of an interest therein should be similar to the taxation of a real estate mortgage investment conduit and the holder of an interest therein under the Internal Revenue Code of 1986, taking into account, as appropriate—

(1) the purpose of facilitating the securitization of small business loans and leases or personal property through the use of small business loan investment conduits and the development of a secondary market in small business loans and leases of personal property;

(2) differences in the nature of qualifying mortgages in a real estate mortgage investment conduit and small business loans and leases of personal property;

(3) differences in the practices of participants in the securitization of real estate mortgages in a real estate mortgage investment conduit and the securitization of other assets; and

(4) such other tax policies as may be warranted.

(b) SMALL BUSINESS LOAN INVESTMENT CONDUIT DEFINED.—For purposes of this section, the term "small business loan investment conduit" means an entity substantially all of the assets of which consist of an interest in one or more promissory notes as leases of personal property evidencing obligations—

(1) of a business that meets the criteria of a small business concern established under section 3(a) of the Small Business Act; and

(2) that were originated by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company.

Subtitle B—Small Business Capital Enhancement

SEC. 251. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) small business concerns are a vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;

(2) adequate access to debt capital is a critical component for small business development, productivity, expansion, and success in the United States;

(3) commercial banks are the most important suppliers of debt capital to small business concerns in the United States;

(4) commercial banks and other depository institutions have various incentives to minimize their risk in financing small business concerns;

(5) as a result of such incentives, many small business concerns with economically sound financing needs are unable to obtain access to needed debt capital;

(6) the small business capital access programs implemented by certain States are a flexible and efficient tool to assist financial institutions in providing access to needed debt capital for many small business concerns in a manner consistent with safety and soundness regulations;

(7) a small business capital access program would complement other programs which assist small business concerns in obtaining access to capital; and

(8) Federal policy can stimulate and accelerate efforts by States to implement small business capital access programs by providing an incentive to States, while leaving the administration of such programs to each participating State.

(b) PURPOSES.—By encouraging States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to provide access to debt capital for a broad portfolio of small business concerns, and thereby promote a more efficient and effective debt market, the purposes of this subtitle are—

(1) to promote economic opportunity and growth;

(2) to create jobs;
(3) to promote economic efficiency;
(4) to enhance productivity; and
(5) to spur innovation.

SEC. 252. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Secretary" means the Secretary of Housing and Urban Development;

(2) the term "appropriate Federal banking agency"—

(A) has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act;

(3) the term "early loan" means a loan enrolled at a time when the aggregate covered amount of loans previously enrolled under the Program by a particular participating financial institution is less than $5,000,000;

(4) the term "enrolled loan" means a loan made by a participating financial institution that is enrolled by a participating State in accordance with this subtitle;

(5) the term "financial institution" means any federally chartered or State-chartered commercial bank, savings association, savings bank, or credit union;

(6) the term "participating financial institution" means any financial institution that has entered into a participation agreement with a participating State in accordance with section 254;

(7) the term "participating State" means any State that has been approved for participation in the Program in accordance with section 253;

(8) the term "passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate (other than the business of passive ownership of real estate); or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term "Program" means the Small Business Capital Enhancement Program established under this subtitle;

(10) the term "reserve fund" means a fund, established by a participating State, earmarked for a particular participating financial institution, for the purposes of—

(A) depositing all required premium charges paid by the participating financial institution and by each borrower receiving a loan under the Program from a participating financial institution;

(B) depositing contributions made by the participating State; and

(C) covering losses on enrolled loans by disbursing accumulated funds; and

(11) the term "State" means—

(A) a State of the United States;

(B) the District of Columbia;

(C) any political subdivision of a State of the United States, which subdivision has a population in excess of the population of the least populated State of the United States; and

(D) any other political subdivision of a State of the United States that the Secretary determines has the capacity to participate in the program.

SEC. 253. APPROVING STATES FOR PARTICIPATION.

(a) APPLICATION.—Any State may apply to the Secretary for approval to be a participating State under the Program and to be eligible for reimbursement by the Secretary pursuant to section 257.

(b) APPROVAL CRITERIA.—The Secretary shall approve a State to be a participating State, if—

(1) a specific department or agency of the State has been designated to implement the Program;

(2) all legal actions necessary to enable such designated department or agency to implement the Program have been accomplished;

(3) funds in the amount of at least $1 for every 2 people residing in the State (as of the last decennial census for which data have been released) are available and have been legally committed to contributions by the State to reserve funds, with such funds being available without time limit and without requiring additional legal action, except that such requirements shall not be construed to limit the authority of the State to take action at a later time that results in the termination of its obligation to enroll loans and make contributions to reserve funds;

(4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subtitle; and

(5) the State and the Secretary have executed a reimbursement agreement that conforms to the requirements of this subtitle.

(c) EXISTING STATE PROGRAMS.—

(1) IN GENERAL.—A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Secretary to be approved to be a participating State. The Secretary shall approve such State to be a participating State, and to be eligible for reimbursements by the Secretary pursuant to section 257, if the State—

(A) satisfies the requirements of subsections (a) and (b); and

(B) certifies that each affected financial institution has satisfied the requirements of section 254.

(2) APPLICABLE TERMS OF PARTICIPATION.—

(A) STATUS OF INSTITUTIONS.—If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 237 in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Secretary approves the State for participation.

(B) EFFECTIVE DATE OF PARTICIPATION.—If an amended participation agreement that conforms with section 255 is required in order to secure participation approval by the Secretary, contributions subject to reimbursement under section 257 shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

(C) USE OF ACCUMULATED RESERVE FUNDS.—A State that is approved for participation in accordance with this subsection may continue to implement the program utilizing the reserve funds accumulated under the State program.

(d) PRIOR APPROPRIATIONS REQUIREMENT.—The Secretary shall not approve a State for participation in the Program until at least $50,000,000 has been appropriated to the Secretary (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 257.

(e) AMENDMENTS TO AGREEMENTS.—If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Secretary in accordance with subsection (b)(4). Any such amendment shall become effective only after it has been approved by the Secretary.

SEC. 254. PARTICIPATION AGREEMENTS.

(a) IN GENERAL.—A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Secretary.

(b) PARTICIPATING FINANCIAL INSTITUTIONS.—Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

SEC. 255. TERMS OF PARTICIPATION AGREEMENTS.

(a) IN GENERAL.—The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

(b) ESTABLISHMENT OF SEPARATE RESERVE FUNDS.—A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r).

(c) INVESTMENT AUTHORITY.—Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the participating financial institution in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(d) EARNED INCOME AND INTEREST.—Interest or income earned on the funds credited to a reserve fund shall be deemed to be part of the reserve fund, except that a participating State may, as further specified in the participation agreement, provide authority for the participating State to withdraw some or all of such interest or income earned.

(e) LOAN TERMS AND CONDITIONS.—

(1) IN GENERAL.—A loan to be filed for enrollment under the Program may be made with such interest rate, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower, consistent with applicable law.

(2) LINES OF CREDIT.—If a loan to be filed for enrollment is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the borrower against the line of credit.

(f) ENROLLMENT PROCESS.—

(1) FILING.—

(A) IN GENERAL.—A participating financial institution shall file each loan made under the Program for enrollment by completing and submitting to the participating State a form prescribed by the participating State.

(B) FORM.—The form referred to in subparagraph (A) shall include a representation by the

participating financial institution that it has complied with the participation agreement in enrolling the loan with the State.

(C) PREMIUM CHARGES.—Accompanying the completed form shall be the nonrefundable premium charges paid by the borrower and the participating financial institution, or evidence that such premium charges have been deposited into the deposit account containing the reserve fund, if applicable.

(D) SUBMISSION.—The participation agreement shall require that the items required by this subsection shall be submitted to the participating State by the participating financial institutions not later than 10 calendar days after a loan is made.

(2) ENROLLMENT BY STATE.—Upon receipt by the participating State of the filing submitted in accordance with paragraph (1), the participating State shall promptly enroll the loan and make a matching contribution to the reserve fund in accordance with subsection (j), unless the information submitted indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

(g) COVERAGE AMOUNT.—In filing a loan for enrollment under the Program, the participating financial institution may specify an amount to be covered under the Program that is less than the full amount of the loan.

(h) PREMIUM CHARGES.—

(1) MINIMUM AND MAXIMUM AMOUNTS.—The premium charges payable to the reserve fund by the borrower and the participating financial institution shall be prescribed by the participating financial institution, within minimum and maximum limits set forth in the participation agreement. The participation agreement shall establish minimum and maximum limits whereby the sum of the premium charges paid in connection with a loan by the borrower and the participating financial institution is not less than 3 percent nor more than 7 percent of the amount of the loan covered under the Program.

(2) ALLOCATION OF PREMIUM CHARGES.—The participation agreement shall specify terms for allocating premium charges between the borrower and the participating financial institution. However, if the participating financial institution is required to pay any of the premium charges, the participation agreement shall authorize the participating financial institution to recover from the borrower the cost of the payment of the participating financial institution, in any manner on which the participating financial institution and the borrower agree.

(i) RESTRICTIONS.—

(1) ACTIONS PROHIBITED.—Except as provided in subsection (h) and paragraph (2) of this subsection, the participating State may not—

(A) impose any restrictions or requirements, relating to the interest rate, fees, collateral, or other business terms and conditions of the loan; or

(B) condition enrollment of a loan in the Program on the review by the State of the risk or creditworthiness of a loan.

(2) EFFECT ON OTHER LAW.—Nothing in this subtitle shall affect the applicability of any other law to the conduct by a participating financial institution of its business.

(j) STATE CONTRIBUTIONS.—In enrolling a loan under the Program, the participating State shall contribute to the reserve fund an amount, as provided for in the participation agreement, which shall not be less than the sum of the amount of premium charges paid by the borrower and the participating financial institution.

(k) ELEMENTS OF CLAIMS.—

(1) FILING.—If a participating financial institution charges off all or part of an enrolled loan, such participating financial institution may file a claim for reimbursement with the participating State by submitting a form that—

(A) includes the representation by the participating financial institution that it is filing the claim in accordance with the terms of the applicable participation agreement; and

(B) contains such other information as may be required by the participating State.

(2) TIMING.—Any claim filed under paragraph (1) shall be filed contemporaneously with the action of the participating financial institution to charge off all or part of an enrolled loan. The participating financial institution shall determine when and how much to charge off on an enrolled loan, in a manner consistent with its usual method for making such determinations on business loans that are not enrolled loans under this subtitle.

(l) ELEMENTS OF CLAIMS.—A claim filed by a participating financial institution may include the amount of principal charged off, not to exceed the covered amount of the loan. Such claim may also include accrued interest and out-of-pocket expenses, if and to the extent provided for under the participation agreement.

(m) PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Except as provided in subsection (n) and paragraph (2) of this subsection, upon receipt of a claim filed in accordance with this section and the participation agreement, the participating State shall promptly pay to the participating financial institution, from funds in the reserve fund, the full amount of the claim as submitted.

(2) INSUFFICIENT RESERVE FUNDS.—If there are insufficient funds in the reserve fund to cover the entire amount of a claim of a participating financial institution, the participating State shall pay to the participating financial institution an amount equal to the current balance in the reserve fund. If the enrolled loan for which the claim has been filed—

(A) is not an early loan, such payment shall be deemed fully to satisfy the claim, and the participating financial institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) is an early loan, such payment shall not be deemed fully to satisfy the claim of the participating financial institution, and at such time as the remaining balance of the claim does not exceed 75 percent of the balance in the reserve fund, the participating State shall, upon the request of the participating financial institution, pay any remaining amount of the claim.

(n) DENIAL OF CLAIMS.—A participating State may deny a claim if a representation or warranty made by the participating financial institution to the participating State at the time that the loan was filed for enrollment or at the time that the claim was submitted was known by the participating financial institution to be false.

(o) SUBSEQUENT RECOVERY OF CLAIM AMOUNT.—If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the participating financial institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any expenses incurred by the institution in collection of such amount.

(p) PARTICIPATION AGREEMENT TERMS.—

(1) IN GENERAL.—In connection with the filing of a loan for enrollment in the Program, the participation agreement—

(A) shall require the participating financial institution to obtain an assurance from each borrower that—

(i) the proceeds of the loan will be used for a business purpose;

(ii) the loan will not be used to finance passive real estate ownership; and

(iii) the borrower is not—

(I) an executive officer, director, or principal shareholder of the participating financial institution;

(II) a member of the immediate family of an executive officer, director, or principal shareholder of the participating financial institution; or

(III) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(B) shall require the participating financial institution to provide assurances to the participating State that the loan has not been made in order to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the borrower to the participating financial institution or to an affiliate of the participating financial institution;

(C) may provide that if—

(i) a participating financial institution makes a loan to a borrower that is a refinancing of a loan previously made to the borrower by the participating financial institution or an affiliate of the participating financial institution;

(ii) such prior loan was not enrolled in the Program; and

(iii) additional or new financing is extended by the participating financial institution as part of the refinancing,

the participating financial institution may file the loan for enrollment, with the amount to be covered under the Program not to exceed the amount of any additional or new financing; and

(D) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this subtitle.

(2) DEFINITIONS.—For purposes of this subsection, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a participating financial institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(q) TERMINATION CLAUSE.—In each participation agreement, the participating State shall reserve for itself the ability to terminate its obligation to enroll loans under the Program. Any such termination shall be prospective only, and shall not apply to amounts of loans enrolled under the Program prior to such termination.

(r) ALLOWABLE WITHDRAWALS FROM FUND.—The participation agreement may provide that, if, for any consecutive period of not less than 24 months, the aggregate outstanding balance of all enrolled loans for a participating financial institution is continually less than the outstanding balance in the reserve fund for that participating financial institution, the participating State, in its discretion, may withdraw an amount from the reserve fund to bring the balance in the reserve fund down to the outstanding balance of all such enrolled loans.

(s) GRANDFATHERED PROVISION.—

(1) SPECIAL TREATMENT OF PREMIUM CHARGES.—Notwithstanding subsection (b) or (d), the participation agreement, if explicitly authorized by a statute enacted by the State before the date of enactment of this Act, may allow a participating financial institution to treat the premium charges paid by the participating financial institution and the borrower into the reserve fund, and interest or income earned on funds in the reserve fund that are deemed to be attributable to such premium charges, as assets of the participating financial institution for accounting purposes, subject to withdrawal by the participating financial institution only—

(A) for the payment of claims approved by the participating State in accordance with this section; and

(B) upon the participating financial institution's withdrawal from authority to make new loans under the Program.

(2) PAYMENT OF POST-WITHDRAWAL CLAIMS.—After any withdrawal of assets from the reserve fund pursuant to paragraph (1)(B), any future claims filed by the participating financial institution on loans remaining in its capital access program portfolio shall only be paid from funds remaining in the reserve fund to the extent that, in the aggregate, such claims exceed the sum of the amount of such withdrawn assets, and interest on that amount, imputed at the same rate as income would have accrued had the amount not been withdrawn.

(3) CONDITIONS FOR TERMINATING SPECIAL AUTHORITY.—If the Secretary determines that the inclusion in a participation agreement of the provisions authorized by this subsection is resulting in the enrollment of loans under the Program that are likely to have been made without assistance provided under this subtitle, the Secretary may notify the participating State that henceforth, the Secretary will only make reimbursements to the State under section 257 with respect to a loan if the participation agreement between the participating State and each participating financial institution has been amended to conform with this section, without exercise of the special authority granted by this subsection.

SEC. 256. REPORTS.

(a) RESERVE FUNDS REPORT.—On or before the last day of each calendar quarter, a participating State shall submit to the Secretary a report of contributions to reserve funds made by the participating State during the previous calendar quarter. If the participating State has made contributions to one or more reserve funds during the previous quarter, the report shall—

(1) indicate the total amount of such contributions;

(2) indicate the amount of contributions which is subject to reimbursement, which shall be equal to the total amount of contributions, unless one of the limitations contained in section 257 is applicable;

(3) if one of the limitations in section 257 is applicable, provide documentation of the applicability of such limitation for each loan for which the limitation applies; and

(4) include a certification by the participating State that—

(A) the information provided in accordance with paragraphs (1), (2), and (3) is accurate;

(B) funds in an amount meeting the minimum requirements of section 253(b)(3) continue to be available and legally committed to contributions by the State to reserve funds, less any amount that has been contributed by the State to reserve funds subsequent to the State being approved for participation in the Program;

(C) there has been no unapproved amendment to any participation agreement or the form of participation agreements; and

(D) the participating State is otherwise implementing the Program in accordance with this subtitle and regulations issued pursuant to section 259.

(b) ANNUAL DATA.—Not later than March 31 of each year, each participating State shall submit to the Secretary annual data indicating the number of borrowers financed under the Program, the total amount of covered loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

(c) FORM.—The reports and data filed pursuant to subsections (a) and (b) shall be in such form as the Secretary may require.

SEC. 257. REIMBURSEMENT BY THE SECRETARY.

(a) REIMBURSEMENTS.—Not later than 30 calendar days after receiving a report filed in compliance with section 256, the Secretary shall reimburse the participating State in an amount equal to 50 percent of the amount of contributions by the participating State to the reserve funds that are subject to reimbursement by the Secretary pursuant to section 256 and this section. The Secretary shall reimburse participating States, as it receives reports pursuant to section 256(a), until available funds are expended.

(b) SIZE OF ASSISTED BORROWER.—The Secretary shall not provide any reimbursement to a participating State with respect to an enrolled loan made to a borrower that has 500 or more employees at the time that the loan is enrolled in the Program.

(c) THREE-YEAR MAXIMUM.—The amount of reimbursement to be provided by the Secretary to a participating State over any 3-year period in connection with loans made to any single borrower or any group of borrowers among which a common enterprise exists shall not exceed $75,000. For purposes of this subsection, "common enterprise" shall have the same meaning as in part 32 of title 12 of the Code of Federal Regulations, or any successor to that part.

(d) LOANS TOTALING LESS THAN $2,000,000.—In connection with a loan in which the covered amount of the loan plus the covered amount of all previous loans enrolled by a participating financial institution does not exceed $2,000,000, the amount of reimbursement by the Secretary to the participating State shall not exceed the lesser of—

(1) 75 percent of the sum of the premium charges paid to the reserve fund by the borrower and the participating financial institution; or

(2) 5.25 percent of the covered amount of the loan.

(e) LOANS TOTALING MORE THAN $2,000,000.—In connection with a loan in which the sum of the covered amounts of all previous loans enrolled by the participating financial institution in the Program equals or exceeds $2,000,000, the amount of reimbursement to be provided by the Secretary to the participating State shall not exceed the lesser of—

(1) 50 percent of the sum of the premium charges paid by the borrower and the participating financial institution; or

(2) 3.5 percent of the covered amount of the loan.

(f) OTHER AMOUNTS.—In connection with the enrollment of a loan that will cause the aggregate covered amount of all enrolled loans to exceed $2,000,000, the amount of reimbursement by the Secretary to the participating State shall be determined—

(1) by applying subsection (d) to the portion of the loan, which when added to the aggregate covered amount of all previously enrolled loans equals $2,000,000; and

(2) by applying subsection (e) to the balance of the loan.

SEC. 258. REIMBURSEMENT TO THE SECRETARY.

(a) IN GENERAL.—If a participating State withdraws funds from a reserve fund pursuant to terms of the participation agreement permitted by subsection (d) or (r) of section 255, such participating State shall, not later than 15 calendar days after such withdrawal, submit to the Secretary an amount computed by multiplying the amount withdrawn by the appropriate factor, as determined under subsection (b).

(b) FACTOR.—The appropriate factor shall be obtained by dividing the total amount of contributions that have been made by the participating State to all reserve funds which were subject to reimbursement—

(1) by 2; and

(2) by the total amount of contributions made by the participating State to all reserve funds, including if applicable, contributions that have been made by the State prior to becoming a participating State if the State continued its own capital access program in accordance with section 253(b).

(c) USE OF REIMBURSEMENTS.—The Secretary may use funds reimbursed pursuant to this section to make reimbursements under section 257.

SEC. 259. REGULATIONS.

The Secretary shall promulgate appropriate regulations to implement this subtitle.

SEC. 260. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT.—There are authorized to be appropriated to the Secretary $50,000,000 to carry out this subtitle.

(b) BUDGETARY TREATMENT.—The amount authorized to be appropriated under subsection (a) shall be subject to discretionary spending caps, as provided in section 601 of the Congressional Budget Act of 1974, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

TITLE III—PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

SEC. 301. INCORPORATED DEFINITIONS.

Unless otherwise specifically provided in this title, for purposes of this title—

(1) the terms "appropriate Federal banking agency", "Federal banking agencies", and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act; and

(2) the term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act.

SEC. 302. ADMINISTRATIVE CONSIDERATION OF BURDEN WITH NEW REGULATIONS.

In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest—

(1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions; and

(2) the benefits of such regulations.

SEC. 303. STREAMLINING OF REGULATORY REQUIREMENTS.

(a) REVIEW OF REGULATIONS; REGULATORY UNIFORMITY.—During the 2-year period beginning on the date of enactment of this Act, each Federal banking agency shall, consistent with principles of safety and soundness and the public interest—

(1) conduct a review of the regulations and written policies of that agency—

(A) to streamline those regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability; and

(B) to remove inconsistencies and outmoded and duplicative requirements; and

(2) work jointly with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

(b) REPORT TO CONGRESS.—The Federal banking agencies shall submit a joint report to the Congress annually for 2 years following the date of enactment of this Act detailing the progress of the agencies in carrying out the requirements of subsection (a).

SEC. 304. ELIMINATION OF DUPLICATIVE FILINGS.

The Federal banking agencies shall work jointly—

(1) to eliminate, to the extent practicable, duplicative or otherwise unnecessary requests for information in connection with applications or notices to the agencies; and

(2) to harmonize, to the extent practicable, any inconsistent publication and public notice requirements.

SEC. 305. COORDINATED AND UNIFIED EXAMINATIONS.

Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by adding at the end the following new paragraph:

"(6) COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

"(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with safety and soundness principles and the public interest—

"(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

"(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations; and

"(iii) work to coordinate the conduct of all examinations made pursuant to this subsection with the appropriate State bank supervisor; and

"(B) not later than 2 years after the date of enactment of the Community Development, Credit Enhancement, and Regulatory Improvement Act of 1993, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies shall conduct a unified examination of each insured depository institution and its affiliates, as required by this subsection, on behalf of all Federal banking agencies.".

SEC. 306. EIGHTEEN-MONTH EXAMINATION RULE FOR CERTAIN SMALL INSTITUTIONS.

Section 10(d)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)(4)) is amended—

(1) in subparagraph (A), by striking "$100,000,000" and inserting "$250,000,000";

(2) in subparagraph (C), by striking "and its composite condition was found to be outstanding;" and inserting "and its composite condition—

"(i) was found to be outstanding; or

"(ii) in the case of an insured depository institution that has total assets of less than $175,000,000, was found to be outstanding or good;".

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following new subparagraph:

"(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and".

SEC. 307. CALL REPORT SIMPLIFICATION.

(a) MODERNIZATION OF CALL REPORT FILING AND DISCLOSURE SYSTEM.—In order to reduce the administrative requirements pertaining to bank reports of condition, savings association financial reports, and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) work jointly to develop a system under which—

(A) insured depository institutions and their affiliates may file such reports and statements electronically; and

(B) the Federal banking agencies may make such reports and statements available to the public electronically; and

(2) not later than 1 year after the date of enactment of this Act, report to the Congress and make recommendations for legislation that would enhance efficiency for filers and users of such reports and statements.

(b) UNIFORM REPORTS AND SIMPLIFICATION OF INSTRUCTIONS.—The Federal banking agencies shall, consistent with the principles of safety and soundness, work jointly—

(1) to adopt a single form for the filing of core information required to be submitted under Federal law to all such agencies in the reports and statements referred to in subsection (a); and

(2) to simplify instructions accompanying such reports and statements and to provide an index to the instructions that is adequate to meet the needs of both filers and users.

(c) REVIEW OF CALL REPORT SCHEDULE.—Each Federal banking agency shall—

(1) review the information required by schedules supplementing the core information referred to in subsection (b); and

(2) eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.

SEC. 308. REPEAL OF PUBLICATION REQUIREMENTS.

(a) REVISED STATUTES.—Section 5211 of the Revised Statutes (12 U.S.C. 161) is amended—

(1) in the fifth sentence of subsection (a), by striking "; and the statement of resources" and all that follows through "as may be required by the Comptroller"; and

(2) in subsection (c), by striking the fourth sentence.

(b) FDIA.—Section 7(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(1)) is amended by striking the fourth sentence.

(c) FEDERAL RESERVE ACT.—Section 9 of the Federal Reserve Act (12 U.S.C. 324) is amended in the last sentence of the sixth undesignated paragraph, by striking "and shall be published" and all that follows through the end of the sentence and inserting a period.

SEC. 309. REGULATORY APPEALS PROCESS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration Board shall establish an independent intra-agency appellate process. The process shall be available to review material supervisory determinations made at insured depository institutions or at insured credit unions that the agency supervises.

(b) REVIEW PROCESS.—In establishing the independent appellate process under subsection (a), each agency shall ensure—

(1) that any appeal of a material supervisory determination by an insured depository institution or credit union is heard and decided expeditiously; and

(2) that appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

(c) COMMENT PERIOD.—Not later than 90 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration shall provide public notice and opportunity for comment on proposed guidelines for the establishment of an appellate process under this section.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "material supervisory determinations" includes determinations relating to—

(A) examination ratings;

(B) the adequacy of loan loss reserve provisions; and

(C) loan classifications on loans that are significant to the institution; and

(2) the term "independent appellate process" means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(e) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall affect the authority of an appropriate Federal banking agency or the National Credit Union Association Board to take enforcement or supervisory action against an institution.

SEC. 310. ELECTRONIC FILING OF CURRENCY TRANSACTION REPORTS.

Section 123 of the Bank Secrecy Act (12 U.S.C. 1953) is amended by adding at the end the following new subsection:

"(c) ACCEPTANCE OF AUTOMATED RECORDS.—The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) in electronic or automated form, subject to terms and conditions established by the Secretary.".

SEC. 311. BANK SECRECY ACT PUBLICATION REQUIREMENTS.

Chapter 53 of title 31, United States Code, is amended by adding at the end the following new section:

"SEC. 5329. STAFF COMMENTARIES.

"The Secretary shall—

"(1) publish all written rulings interpreting this chapter; and

"(2) annually issue a staff commentary on the regulations issued under this chapter.".

SEC. 312. EXEMPTION OF BUSINESS LOANS FROM REAL ESTATE SETTLEMENT PROCEDURES ACT REQUIREMENTS.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. EXEMPTED TRANSACTIONS.

"This Act does not apply to credit transactions involving extensions of credit—

"(1) primarily for business, commercial, or agricultural purposes; or

"(2) to government or governmental agencies or instrumentalities.".

SEC. 313. FLEXIBILITY IN CHOOSING BOARDS OF DIRECTORS.

Section 5146 of the Revised Statutes (12 U.S.C. 72) is amended in the first sentence, by striking "two thirds" and inserting "a majority".

SEC. 314. HOLDING COMPANY AUDIT REQUIREMENTS.

Section 36(i) of the Federal Deposit Insurance Act (12 U.S.C. 1831m(i)) is amended by striking paragraph (2) and inserting the following:

"(2) the institution—

"(A) has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000;

"(B) has—

"(i) total assets, as of the beginning of such fiscal year, of more than $5,000,000,000 and less than $9,000,000,000; and

"(ii) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency; or

"(C)(i) has total assets, as of the beginning of such fiscal year, of more than $9,000,000,000; and

"(ii) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

Notwithstanding paragraph (2)(C), in the case of an insured depository institution that the Corporation determines to be a large institution, the audit committee of the holding company of such an institution shall not include any large customers of the institution.

"(3) The appropriate Federal banking agency may require an institution with total assets in excess of $9,000,000,000 to comply with this section, notwithstanding the exception provided by this subsection, if it determines that such exemption will create a significant risk to the affected deposit insurance fund if applied to that institution.".

SEC. 315. STATE REGULATION OF REAL ESTATE APPRAISALS.

Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by inserting after subsection (a) the following new subsection:

"(b) RECIPROCITY.—The Appraisal Subcommittee shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States."; and

(3) in subsection (a)—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C);

(B) by striking "A State" and inserting the following:

"(1) IN GENERAL.—A State"; and

(C) by adding at the end the following new paragraph:

"(2) FEES FOR TEMPORARY PRACTICE.—A State appraiser certifying or licensing agency shall not impose excessive fees or burdensome requirements, as determined by the Appraisal Subcommittee, for temporary practice under this subsection.".

SEC. 316. ACCELERATION OF EFFECTIVE DATE FOR INTERAFFILIATE TRANSACTIONS.

(a) HOME OWNERS' LOAN ACT AMENDMENT.—Section 11(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1468(a)(2)) is amended by adding at the end the following new subparagraph:

"(C) TRANSITION RULE FOR WELL CAPITALIZED SAVINGS ASSOCIATIONS.—

"(i) IN GENERAL.—A savings association that is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act), as determined without including goodwill in calculating core capital, shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act.

"(ii) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—Any savings association that engages under clause (i) in a transaction that would not otherwise be permissible under this subsection, and any affiliated insured bank that is commonly controlled (as defined in section 5(e)(9) of the Federal Deposit Insurance Act), shall be subject to subsection (e) of section 5 of the Federal Deposit Insurance Act as if paragraph (6) of that subsection did not apply.".

(b) REPEAL PROVISION.—Effective on January 1, 1995, subparagraph (C) of section 11(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1468(a)(2)) (as added by subsection (a) of this section) is repealed.

SEC. 317. COLLATERALIZATION OF PUBLIC DEPOSITS.

Section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(2) by striking "No agreement" and inserting the following:

"(1) IN GENERAL.—No agreement"; and

(3) by adding at the end the following new paragraph:

"(2) PUBLIC DEPOSITS.—An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 11(a)(2) shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.".

SEC. 318. ELIMINATION OF STOCK VALUATION PROVISION.

(a) IN GENERAL.—Section 39(b) of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1(b)), as added by section 132(a) of the Federal Deposit Insurance Corporation Improvements Act of 1991) is amended to read as follows:

"(b) ASSET QUALITY, EARNINGS, AND STOCK VALUATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe standards relating to asset quality, earnings, and stock valuation that the agency determines to be appropriate.".

(b) ESTABLISHING STANDARDS IN GUIDELINES.—Section 39(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1(d)) is amended—

(1) in the subsection heading, by striking "BY REGULATION"; and

(2) in paragraph (1)—

(A) in the first sentence, by inserting "or guideline" before the period; and

(B) in the second sentence, by inserting "or guidelines" after "Such regulations".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be construed to have the same effective date as section 39 of the Federal Deposit Insurance Act, as provided in section 132(c) of the Federal Deposit Insurance Corporation Improvements Act of 1991.

SEC. 319. EXPEDITED PROCEDURES FOR FORMING A BANK HOLDING COMPANY.

Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) is amended—

(1) in the second sentence, by striking "or (B)" and inserting "(B)"; and

(2) in the second sentence, by inserting before the period the following: "; or (C) with 30 days prior notification to the Board, the acquisition by a company of control of a bank in a reorganization in which a person or group of persons exchanges its shares of the bank for shares of a newly formed bank holding company and receives, after the reorganization, substantially the same proportional share interest in the holding company as it held in the bank (except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law) if, immediately following the acquisition, (i) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; (ii) the bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act); and (iii) the holding company does not engage in any activities other than those of banking or managing and controlling banks".

SEC. 320. EXEMPTION OF CERTAIN HOLDING COMPANY FORMATIONS FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933.

Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following new paragraph:

"(7) transactions involving offers or sales of equity securities, in connection with the acquisition of a bank by a company under section 3(a) of the Bank Holding Company Act of 1956, if—

"(A) the acquisition occurs solely as part of a reorganization in which a person or group of persons exchanges its shares of a bank for shares of a newly formed bank holding company with no significant assets other than securities of the bank and the existing subsidiaries of the bank;

"(B) the shareholders receive, after that reorganization, substantially the same proportional share interests in the bank holding company as they held in the bank, except for changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

"(C) the rights and interests of security holders in the bank holding company are substantially the same as those in the bank prior to the transaction, other than as may be required by law; and

"(D) the bank holding company has substantially the same assets and liabilities as the bank had prior to the transaction.".

SEC. 321. REDUCTION OF POST-APPROVAL WAITING PERIOD FOR BANK HOLDING COMPANY ACQUISITIONS.

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting before the period at the end of the fourth sentence the following: "or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval".

SEC. 322. REDUCTION OF POST-APPROVAL WAITING PERIOD FOR BANK MERGERS.

Section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by inserting before the period at the end of the last sentence the following: "or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval".

SEC. 323. BANKERS' BANKS.

(a) OWNERSHIP BY BANKERS' BANKS.—

(1) Paragraph Seven of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended in the eleventh sentence—

(A) by inserting "or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act)" after "(except to the extent directors' qualifying shares are required by law) by depository institutions"; and

(B) by striking "services for other depository institutions and their officers, directors and employees" and inserting the following: "services to or for other depository institutions and the officers, directors, and employees of such institutions, and in providing correspondent banking services at the request of other depository institutions (also referred to as a 'banker's bank')".

(2) Section 5169(b)(1) of the Revised Statutes (12 U.S.C. 27(b)(1)) is amended—

(A) by inserting "or depository institution holding companies" after "(except to the extent directors' qualifying shares are required by law) by other depository institutions"; and

(B) by striking "services for other depository institutions and their officers, directors and employees" and inserting the following: "services to or for other depository institutions and the officers, directors, and employees of such institutions, and in providing correspondent banking services at the request of other depository institutions (also referred to as a 'banker's bank')".

(b) OWNERSHIP BY SAVINGS ASSOCIATIONS.—Section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)) is amended by adding at the end the following new subparagraph:

"(E) BANKERS' BANKS.—A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seven of section 5136 of the Revised Statutes or in section 5169(b) of the Revised Statutes, on the same terms and conditions as a national bank may purchase such shares.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) BANK HOLDING COMPANY ACT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by striking the second sentence.

(2) MANAGEMENT INTERLOCKS ACT.—Section 202(3)(D) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(3)(D)) is amended by striking "the voting securities" and all that follows through the end of the subpara-

graph and inserting "and is a bankers' bank, described in Paragraph Seven of section 5136 of the Revised Statutes; or".

(d) LENDING LIMIT FOR LOANS SECURED BY SECURITIES.—Section 11(m) of the Federal Reserve Act (12 U.S.C. 248(m)) is amended by striking "10 percentum" each place such term appears and inserting "15 percent".

SEC. 324. BANK SERVICE CORPORATION ACT AMENDMENT.

Section 5 of the Bank Service Corporation Act (12 U.S.C. 1865) is amended—

(1) in subsection (a), by striking "the prior approval of" and inserting "prior notice, as determined by"; and

(2) in subsection (c), by inserting "or whether to approve or disapprove any notice" after "approval".

SEC. 325. MERGER TRANSACTION REPORTS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(1) in paragraph (4)—

(A) in the first sentence—

(i) by striking "General and the other two" and inserting "General, who shall promptly notify the other"; and

(ii) by inserting before the period "of any such proposed transaction that raises a significant competitiveness issue"; and

(B) in the second sentence, by striking "and the other two banking agencies"; and

(2) in paragraph (6), by striking "and the other two banking agencies".

SEC. 326. CREDIT CARD ACCOUNTS RECEIVABLE SALES.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended by adding at the end the following new paragraphs:

"(14) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

"(A) NOTIFICATION REQUIRED.—An undercapitalized insured depository institution (as defined in section 38) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

"(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

"(i) determines that the waiver is in the best interests of the deposit insurance fund; and

"(ii) provides a written waiver to the selling institution.

"(C) EFFECT OF WAIVER ON SUCCESSORS.—

"(i) IN GENERAL.—If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

"(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

"(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

"(ii) EXCEPTION.—Clause (i)(II) does not—

"(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

"(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

"(III) apply to any transaction in which the acquirer acquires only insured deposits.

"(D) WAIVER NOT ACTIONABLE.—The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

"(E) OTHER AUTHORITY NOT AFFECTED.—This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

"(15) CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

"(A) IN GENERAL.—If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 13 from using the list except as permitted under the agreement.

"(B) FRAUDULENT TRANSACTIONS EXCLUDED.—Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.".

SEC. 327. LIMITING POTENTIAL LIABILITY ON FOREIGN ACCOUNTS.

(a) AMENDMENT TO THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 25B the following new section:

"SEC. 25C. POTENTIAL LIABILITY ON FOREIGN ACCOUNTS.

"A member bank shall not be required to repay any deposit made at a foreign branch of the bank if the branch cannot repay the deposit due to—

"(1) an act of war, insurrection or civil strife; or

"(2) an action by a foreign government or instrumentality (whether de jure or de facto) in the country in which the branch is located,

unless the member bank has expressly agreed in writing to repay the deposit under those circumstances. The Board and the Comptroller of the Currency may jointly prescribe such regulations as they deem necessary to implement this section.".

(b) CONFORMING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(q) SOVEREIGN RISK.—Section 25C of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 3(l)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)(5)) is amended to read as follows:

"(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

"(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

"(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State; and".

(c) EXISTING CLAIMS NOT AFFECTED—Section 25C of the Federal Reserve Act (as added by subsection (a)) shall not be applied retroactively and shall not be construed to affect or apply to any claim or cause of action addressed by that section arising from events or circumstances that occurred before the date of enactment of this Act.

SEC. 328. AMENDMENTS TO OUTDATED DIVIDEND PROVISIONS.

(a) WITHDRAWAL OF CAPITAL.—Section 5204 of the Revised Statutes (12 U.S.C. 56) is amended—

(1) in the second sentence, by striking "net profits then on hand, deducting therefrom its losses and bad debts" and inserting "undivided profits, subject to other applicable provisions of law"; and

(2) by striking the third sentence.

(b) DECLARATION OF DIVIDENDS.—Section 5199 of the Revised Statutes (12 U.S.C. 60) is amended—

(1) in the first sentence, by striking "net profits of the association" and inserting "undivided profits of the association, subject to the limitations in subsection (b),";

(2) by striking "net profits" each subsequent place such term appears and inserting "net income"; and

(3) by striking subsection (c).

SEC. 329. ELIMINATION OF DUPLICATIVE DISCLOSURES FOR HOME EQUITY LOANS.

Section 4(a) of the Real Estate Settlement Procedures Act (12 U.S.C. 2603(a)) is amended by adding at the end the following: "In the case of a federally related mortgage loan secured by a subordinate lien on residential property, disclosures made under section 127A(a) of the Truth in Lending Act may be used in lieu of the disclosures required under this section if—

"(1) the disclosures made pursuant to such section 127A(a) contain all of the information that is required under this section; and

"(2) the information is disclosed in a manner that is no less conspicuous than is required under this section.".

SEC. 330. REPORT ON CAPITAL STANDARDS AND THEIR IMPACT ON THE ECONOMY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury, after consultation with the Federal banking agencies, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on the effect of the implementation of risk-based capital standards on—

(1) the safety and soundness of insured depository institutions; and

(2) the availability of credit, particularly to consumers and small business concerns.

(b) RECOMMENDATIONS.—The report required by subsection (a) shall contain any recommendations that the Secretary of the Treasury considers relevant.

SEC. 331. STUDIES ON THE IMPACT OF THE PAYMENT OF INTEREST ON RESERVES.

(a) FEDERAL RESERVE STUDY.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System, in consultation with the Federal Deposit Insurance Corporation, shall conduct a study and report to Congress on—

(1) the necessity, for monetary policy purposes, of continuing to require insured depository institutions to maintain sterile reserves;

(2) the appropriateness of paying a market rate of interest to insured depository institutions on sterile reserves or, in the alternative, providing for payment of such interest into the appropriate deposit insurance fund;

(3) the monetary impact that the failure to pay interest on sterile reserves has had on insured depository institutions, including an estimate of the total dollar amount of interest and the potential income lost by insured depository institutions; and

(4) the impact that the failure to pay interest on sterile reserves has had on the ability of the banking industry to compete with nonbanking providers of financial services and with foreign banks.

(b) BUDGETARY IMPACT STUDY.—Not later than 180 days after the date of enactment of this

Act, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office, in consultation with the Committees on the Budget of the Senate and the House of Representatives, shall jointly conduct a study and report to the Congress on the budgetary impact of—

(1) paying a market rate of interest to insured depository institutions on sterile reserves; and

(2) paying such interest into the respective deposit insurance funds.

SEC. 332. STUDY AND REPORT ON STREAMLINED LENDING PROCESS FOR CONSUMER BENEFIT.

(a) STUDY.—During the 12-month period beginning on the date of enactment of this Act, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Secretary of Housing and Urban Development shall conduct a study of ways to improve the home mortgage, small business, and consumer lending processes, consistent with the principles of safety and soundness, so as to—

(1) reduce consumer burdens, inconvenience, cost, and delay; and

(2) minimize cost and burdens on insured depository institutions, credit unions, and other lenders.

(b) COMMENTS.—In conducting the study under subsection (a), comments shall be solicited from consumer groups, insured depository institutions, other lenders, and any other interested parties.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Secretary of Housing and Urban Development shall submit a joint report to the Congress indicating any legislative changes necessary to improve the home mortgage, small business, and consumer lending processes and including a summary of comments received pursuant to subsection (b).

SEC. 333. REPEAL OF OUTDATED CHARTER REQUIREMENT FOR NATIONAL BANKS.

Section 5170 of the Revised Statutes (12 U.S.C. 28) is repealed.

SEC. 334. INCLUSION OF COMPTROLLER OF THE CURRENCY; CLARIFICATION OF REVISED STATUTES.

(a) PUBLIC LAW 93–425.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting "the Comptroller of the Currency," after "Federal Deposit Insurance Corporation,".

(b) REVISED STATUTES.—

(1) SECTION 5240.—The third paragraph of section 5240 of the Revised Statutes (12 U.S.C. 482) is amended by inserting "or section 301(f)(1) of title 31, United States Code," after "provisions of this section".

(2) SECTION 324.—Section 324 of the Revised Statutes (12 U.S.C. 1) is amended by adding at the end the following: "The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 3(b)(3) of the Home Owners' Loan Act.".

(3) SECTION 5239.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by inserting at the end the following new subsection:

"(d) AUTHORITY.—The Comptroller of the Currency may act in the Comptroller's own name and through the Comptroller's own attorneys in enforcing any provision of this title, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.".

SEC. 335. COMMEMORATION OF 1995 SPECIAL OLYMPIC WORLD GAMES.

(a) COIN SPECIFICATIONS.—

(1) ONE DOLLAR SILVER COINS.—

(A) ISSUANCE.—The Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall issue not more than 800,000 $1 coins, which shall weigh 26.73 grams, have a diameter of 1.500 inches, and shall contain 90 percent silver and 10 percent copper.

(B) DESIGN.—The design of the coins issued under this section shall be emblematic of the 1995 Special Olympics World Games. On each such coin there shall be a designation of the value of the coin, an inscription of the year "1995", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(2) LEGAL TENDER.—The coins issued under this section shall be legal tender as provided in section 5103 of title 31, United States Code.

(3) NUMISMATIC ITEMS.—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this section shall be considered to be numismatic items.

(b) SOURCES OF BULLION.—The Secretary shall obtain silver for the coins minted under this section only from stockpiles established under the Strategic and Critical Materials Stock Piling Act.

(c) SELECTION OF DESIGN.—The design for the coins authorized by this section shall be selected by the Secretary after consultation with the 1995 Special Olympics World Games Organizing Committee, Inc. and the Commission of Fine Arts. As required by section 5135 of title 31, United States Code, the design shall also be reviewed by the Citizens Commemorative Coin Advisory Committee.

(d) ISSUANCE OF THE COINS.—

(1) QUALITY OF COINS.—The coins authorized under this section may be issued in uncirculated and proof qualities.

(2) MINT FACILITY.—Not more than 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this section.

(3) PERIOD FOR ISSUANCE.—The Secretary shall issue coins minted under this Act during the period beginning on January 15, 1995, and ending on December 31, 1995.

(e) SALE OF THE COINS.—

(1) SALE PRICE.—The coins issued under this section shall be sold by the Secretary at a price equal to the sum of the face value of the coins, the surcharge provided in paragraph (4) with respect to such coins, and the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(2) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount.

(3) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins authorized under this section prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount.

(4) SURCHARGE REQUIRED.—All sales shall include a surcharge of $10 per coin.

(f) GENERAL WAIVER OF PROCUREMENT REGULATIONS.—No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this section. Nothing in this subsection shall relieve any person entering into a contract under the authority of this section from complying with any law relating to equal employment opportunity.

(g) DISTRIBUTION OF SURCHARGES.—The total surcharges collected by the Secretary from the sale of the coins issued under this section shall be promptly paid by the Secretary to the 1995 Special Olympics World Games Organizing Committee, Inc. Such amounts shall be used to—

(1) provide a world class sporting event for athletes with mental retardation;

(2) demonstrate to a global audience the extraordinary talents, dedication, and courage of persons with mental retardation; and

(3) underwrite the cost of staging and promoting the 1995 Special Olympics World Games.

(h) AUDITS.—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the 1995 Special Olympics World Games Organizing Committee, Inc. as may be related to the expenditure of amounts paid under subsection (g).

(i) FINANCIAL ASSURANCES.—

(1) NO NET COST TO THE GOVERNMENT.—The Secretary shall take all actions necessary to ensure that the issuance of the coins authorized by this section shall result in no net cost to the United States Government.

(2) ADEQUATE SECURITY FOR PAYMENT REQUIRED.—No coin shall be issued under this section unless the Secretary has received—

(A) full payment therefore;

(B) security satisfactory to the Secretary to indemnify the United States for full payment; or

(C) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

SEC. 336. EXEMPTION FOR BUSINESS ACCOUNTS.

Section 274(1) of the Truth in Savings Act (12 U.S.C. 4313(1)) is amended to read as follows:

"(1) ACCOUNT.—The term 'account' means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.".

SEC. 337. BOARD DISCRETION REGARDING CHECK-RELATED FRAUD.

Section 604(e) of the Expedited Funds Availability Act (12 U.S.C. 4003(e)) is amended by adding at the end the following new paragraph:

"(4) PREVENTION OF CHECK-RELATED LOSSES.—

"(A) IN GENERAL.—The Board may, by regulation or order, extend the 1-business-day period specified in section 603(b)(1), regarding availability of funds deposited by local checks, to 2 business days if the Board determines that—

"(i) there is a pattern of significant increases in check-related losses at depository institutions attributable to the provisions of this title; and

"(ii) such action is necessary to diminish the volume of such check-related losses.

"(B) LIMITATION ON OTHER AUTHORITY.—The authority of the Board under paragraph (1) shall not apply to the applicability of section 603(b)(1) or the time period specified therein.".

SEC. 338. CIVIL LIABILITY UNDER TRUTH IN SAVINGS.

Section 271(a)(2)(A) of the Truth in Savings Act (12 U.S.C. 4310(a)(2)(A)) is amended by inserting "(other than an action based on a violation of section 263)" after "individual action".

SEC. 339. INSIDER LENDING.

(a) LOANS TO EXECUTIVE OFFICERS BY MEMBER BANKS.—Section 22(g)(2) of the Federal Reserve Act (12 U.S.C. 375a(g)(2)) is amended by striking "With the specific prior approval of its board of directors, a member" and inserting "A member".

(b) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS.—Section 22(h)(8) of the Federal Reserve Act (12 U.S.C. 375b(h)(8)) is amended—

(1) by striking "MEMBER BANK.—FOR" and inserting the following: "MEMBER BANK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for"; and

(2) by adding at the end the following:

"(B) EXCEPTION.—The Board shall have the authority by regulation to suspend the applicability of any or all of this subsection, except for the provisions of paragraph (2), with respect to

any individual who is a director or an executive officer of a subsidiary of the company that controls the member bank, if the Board finds that such individual does not actually participate in major policymaking functions of the member bank.".

SEC. 340. REVISIONS OF STANDARDS.

Section 305(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828 note) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) take into account the size and activities of the institutions and do not cause undue reporting burdens.".

SEC. 341. ALTERNATIVE RULES FOR RADIO ADVERTISING OF CONSUMER LEASES.

Section 184 of the Truth in Lending Act (15 U.S.C. 1667c) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) RADIO ADVERTISEMENTS.—

"(1) IN GENERAL.—An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) if such advertisement clearly and conspicuously—

"(A) states the information required by paragraphs (1) and (2) of subsection (a);

"(B) states the number, amounts, due dates, or periods of scheduled payments, and the total of such payments under the lease; and

"(C) includes—

"(i) a referral to—

"(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a); or

"(II) a written advertisement that—

"(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

"(bb) includes the information required to be disclosed under subsection (a); and

"(ii) the name and dates of any publication referred to in clause (i)(II); and

"(D) includes any other information which the Board determines necessary to carry out this chapter.

"(2) ESTABLISHMENT OF TOLL-FREE NUMBER.—

"(A) IN GENERAL.—In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

"(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

"(ii) maintain such telephone number for not less than 10 days, beginning on the date of any such broadcast; and

"(iii) provide the information required under subsection (a) with respect to the lease to any person who calls such number.

"(B) FORM OF INFORMATION.—The information required to be provided under subparagraph (A)(iii) shall be provided orally or, if requested by the consumer, in written form.

"(3) NO EFFECT ON OTHER LAW.—Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any other medium.".

SEC. 342. DEPOSIT BROKER REGISTRATION.

Section 29(g)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)(3)) is amended—

(1) by inserting "that is not well capitalized" after "includes any insured depository institution";

(2) by striking "of any insured depository" and inserting "of such";

(3) by striking "(with respect to such deposits)"; and

(4) by striking "having the same type of charter".

SEC. 343. EXTENSION OF MANAGEMENT INTERLOCKS GRANDFATHER CLAUSE.

Subsections (a) and (b) of section 206 of the Depository Institution Management Interlocks Act (12 U.S.C. 3205) are each amended by striking "15 years" and inserting "20 years".

SEC. 344. CLARIFICATION OF PROVISION RELATING TO ADMINISTRATIVE AUTONOMY.

Section 3(b)(3) of the Home Owners' Loan Act (12 U.S.C. 1462a) is amended by striking everything after "Director" and inserting in lieu thereof "(including agency rulemaking proceedings and enforcement actions) unless otherwise specifically provided by law.".

SEC. 345. CONSUMER SURVEYS AND REPORT.

(a) SURVEYS.—Not later than 6 months after the date of enactment of this Act, the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and the Secretary of Housing and Urban Development shall jointly conduct an objective and statistically valid survey of financial services consumers to determine the general public awareness of, perceived benefits to consumers of, and effectiveness of the Federal banking laws under which the Federal banking agencies and the Department of Housing and Urban Development operate that are intended for the protection of such consumers, including—

(1) the Expedited Funds Availability Act;

(2) the Truth in Lending Act;

(3) the Truth in Savings Act;

(4) the Real Estate Settlement Procedures Act of 1974;

(5) the Home Mortgage Disclosure Act of 1975;

(6) the Equal Credit Opportunity Act;

(7) the Community Reinvestment Act of 1977;

(8) the Home Equity Loan Consumer Protection Act;

(9) the Fair Credit and Charge Card Disclosure Act; and

(10) the rules and regulations promulgated under those banking laws.

(b) CONSULTATION.—In developing such a survey, the Federal banking agencies and the Secretary of Housing and Urban Development shall consult with consumer groups, insured depository institutions, other lenders, and any other interested parties.

(c) INFORMATION FOR SURVEYED CONSUMERS.—The survey shall provide for distribution to participating consumers a summary explanation of the Federal banking law being surveyed and how each is currently being implemented.

(d) REPORT.—Not later than 60 days after completion of its survey under subsection (a), the Federal banking agencies and the Secretary of Housing and Urban Development shall jointly submit a report of the results of their survey to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

SEC. 346. SIMPLIFIED DISCLOSURE FOR EXISTING DEPOSITORS.

(a) IN GENERAL.—Section 43(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(3)) is amended to read as follows:

"(3) ACKNOWLEDGEMENT OF DISCLOSURE.—

"(A) NEW DEPOSITORS.—With respect to any depositor who was not a depositor at the depository institution before June 19, 1994, receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

"(i) the institution is not federally insured; and

"(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

"(B) CURRENT DEPOSITORS.—Receive any deposit after the effective date of this paragraph for the account of any depositor who was a depositor before June 19, 1994, only if—

"(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

"(ii) the institution has complied with the provisions of subparagraph (C) which are applicable as of the date of the deposit.

"(C) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

"(i) IN GENERAL.—Transmit to each depositor who was a depositor before June 19, 1994, and has not signed a written acknowledgement described in subparagraph (A)—

"(I) a card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

"(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

"(ii) MANNER AND TIMING OF NOTICE.—

"(I) FIRST NOTICE.—Make the transmission described in clause (i) via first class mail within 90 days after June 19, 1994.

"(II) SECOND NOTICE.—Make a 2d transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i)(I) which has been signed by the depositor.

"(III) THIRD NOTICE.—Make a 3d transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (II), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i)(I) which has been signed by the depositor.".

(b) EFFECTIVE DATE.—Section 43(b)(3) of the Federal Deposit Insurance Act, as amended by subsection (a), shall take effect in accordance with section 151(a)(2)(D) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 347. COMMERCIAL MORTGAGE RELATED SECURITIES.

(a) IN GENERAL.—Section 3(a)(41)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)(A)(i)) is amended —

(1) by striking "or on a residential" and inserting "on a residential"; and

(2) by inserting before the semicolon ", or on one or more parcels of real estate upon which is located one or more commercial structures".

(b) AMENDMENT TO THE REVISED STATUTES.—Paragraph Seven of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended in the twelfth sentence, by striking "(15 U.S.C. 78c(a)(41))), subject to such regulations" and inserting "(15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations".

(c) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Comptroller of the Currency shall promulgate final regulations, in accordance with the thirteenth sentence of Paragraph Seven of section 5136 of the Revised Statutes (as amended by subsection (b)), to carry out the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective upon the

date of promulgation of final regulations under subsection (c).

(e) STATE OPT OUT.—Notwithstanding the amendments made by this section, a note that is directly secured by a first lien on one or more parcels of real estate upon which is located one or more commercial structures shall not be considered to be a mortgage related security under section 3(a)(41) of the Securities Exchange Act of 1934 in any State that, prior to the expiration of 7 years after the date of enactment of this Act, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided by the amendments made by this subsection. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto, and shall not require the sale or other disposition of any securities acquired prior thereto.

SEC. 348. OFFSET OF COSTS OF CERTAIN PROGRAMS.

(a) HUD MULTIFAMILY HOUSING DISPOSITION PROCESS.—

(1) FINDINGS.—The Congress finds that—

(A) the portfolio of multifamily housing project mortgages insured by the FHA is severely troubled and at risk of default, requiring the Secretary to increase loss reserves from $5,500,000,000 in 1991 to $11,900,000,000 in 1992 to cover estimated future losses;

(B) the inventory of multifamily housing projects owned by the Secretary has more than tripled since 1989, and, by the end of 1993, may exceed 75,000 units;

(C) the cost to the Federal Government of owning and maintaining multifamily housing projects escalated to approximately $250,000,000 in fiscal year 1992;

(D) the inventory of multifamily housing projects subject to mortgages held by the Secretary has increased dramatically, to more than 2,400 mortgages, and approximately half of these mortgages, with over 230,000 units, are delinquent;

(E) the inventory of insured and formerly insured multifamily housing projects is rapidly deteriorating, endangering tenants and neighborhoods;

(F) over 5 million families today have a critical need for housing that is affordable and habitable; and

(G) the current statutory framework governing the disposition of multifamily housing projects effectively impedes the Government's ability to dispose of properties, protect tenants, and ensure that projects are maintained over time.

(2) MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.—Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11) is amended to read as follows:

"SEC. 203. MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.

"(a) GOALS.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary in a manner that—

"(1) is consistent with the National Housing Act and this section;

"(2) will protect the financial interests of the Federal Government; and

"(3) will, in the least costly fashion among reasonable available alternatives, further the goals of—

"(A) preserving housing so that it can remain available to and affordable by low-income persons;

"(B) preserving and revitalizing residential neighborhoods;

"(C) maintaining existing housing stock in a decent, safe, and sanitary condition;

"(D) minimizing the involuntary displacement of tenants;

"(E) maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons; and

"(F) minimizing the need to demolish multifamily housing projects.

The Secretary, in determining the manner in which a project is to be managed or disposed of, may balance competing goals relating to individual projects in a manner that will further the purposes of this section.

"(b) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) MULTIFAMILY HOUSING PROJECT.—The term 'multifamily housing project' means any multifamily rental housing project which is, or prior to acquisition by the Secretary was, assisted or insured under the National Housing Act, or was subject to a loan under section 202 of the Housing Act of 1959.

"(2) SUBSIDIZED PROJECT.—The term 'subsidized project' means a multifamily housing project receiving any of the following types of assistance immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary:

"(A) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act.

"(B) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act.

"(C) Direct loans made under section 202 of the Housing Act of 1959.

"(D) Assistance in the form of—

"(i) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

"(ii) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975); or

"(iii) housing assistance payments made under section 8 of the United States Housing Act of 1937 (excluding payments made for tenant-based assistance under section 8),

if (except for purposes of section 183(c) of the Housing and Community Development Act of 1987) such assistance payments are made to more than 50 percent of the units in the project.

"(3) FORMERLY SUBSIDIZED PROJECT.—The term 'formerly subsidized project' means a multifamily housing project owned by the Secretary that was a subsidized project immediately prior to its acquisition by the Secretary.

"(4) UNSUBSIDIZED PROJECT.—The term 'unsubsidized project' means a multifamily housing project owned by the Secretary that is not a subsidized project or a formerly subsidized project.

"(c) MANAGEMENT OR DISPOSITION OF PROPERTY.—

"(1) DISPOSITION TO PURCHASERS.—The Secretary is authorized, in carrying out this section, to dispose of a multifamily housing project owned by the Secretary on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate considering the low-income character of the project and the requirements of subsection (a), to a purchaser determined by the Secretary to be capable of—

"(A) satisfying the conditions of the disposition;

"(B) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition;

"(C) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(D) providing adequate organizational staff and financial resources to the project; and

"(E) meeting such other requirements as the Secretary may determine.

"(2) CONTRACTING FOR MANAGEMENT SERVICES.—The Secretary is authorized, in carrying out this section—

"(A) to contract for management services for a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of—

"(i) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses to ensure that the project will remain in decent, safe, and sanitary condition;

"(ii) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(iii) providing adequate organizational, staff, and other resources to implement a management program determined by the Secretary; and

"(iv) meeting such other requirements as the Secretary may determine; and

"(B) to require the owner of a multifamily housing project that is subject to a mortgage held by the Secretary to contract for management services for the project in the manner described in subparagraph (A).

"(d) MAINTENANCE OF HOUSING PROJECTS.—

"(1) HOUSING PROJECTS OWNED BY THE SECRETARY.—In the case of multifamily housing projects that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

"(A) to the greatest extent possible, maintain all such occupied projects in a decent, safe, and sanitary condition;

"(B) to the greatest extent possible, maintain full occupancy in all such projects; and

"(C) maintain all such projects for purposes of providing rental or cooperative housing.

"(2) HOUSING PROJECTS SUBJECT TO A MORTGAGE HELD BY THE SECRETARY.—In the case of any multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of paragraph (1).

"(e) REQUIRED ASSISTANCE.—In carrying out the goal specified in subsection (a)(3)(A), the Secretary shall take not less than one of the following actions:

"(1) CONTRACT WITH OWNER.—Enter into contracts under section 8 of the United States Housing Act of 1937, to the extent budget authority is available, with owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary.

"(A) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING CERTAIN ASSISTANCE.—In the case of a subsidized or formerly subsidized project referred to in subparagraphs (A) through (C) of subsection (b)(2)—

"(i) the contract shall be sufficient to assist at least all units covered by an assistance contract under any of the authorities referred to in subsection (b)(2)(D) before acquisition, unless the Secretary acts pursuant to the provisions of subparagraph (C);

"(ii) in the case of units requiring project-based rental assistance pursuant to this paragraph that are occupied by families who are not eligible for assistance under section 8, a contract under this subparagraph shall also provide that

when a vacancy occurs, the owner shall lease the available unit to a family eligible for assistance under section 8; and

"(iii) the Secretary shall take actions to ensure the availability and affordability, as defined in paragraph (3)(B), for the remaining useful life of the project, as defined by the Secretary, of any unit located in any project referred to in subparagraphs (A) through (C) of subsection (b)(2) that does not otherwise receive project-based assistance under this subparagraph. To carry out this clause, the Secretary may require purchasers to establish use or rent restrictions maintaining affordability, as defined in paragraph (3)(B).

"(B) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING OTHER ASSISTANCE.—In the case of a subsidized or formerly subsidized project referred to in subsection (b)(2)(D)—

"(i) the contract shall be sufficient to assist at least all units in the project that are covered, or were covered immediately before foreclosure on or acquisition of the project by the Secretary, by an assistance contract under any of the authorities referred to in such subsection, unless the Secretary acts pursuant to provisions of subparagraph (C); and

"(ii) in the case of units requiring project-based rental assistance pursuant to this paragraph that are occupied by families who are not eligible for assistance under section 8, a contract under this paragraph shall also provide that when a vacancy occurs, the owner shall lease the available unit to a family eligible for assistance under section 8.

"(C) EXCEPTIONS TO SUBPARAGRAPHS (A) AND (B).—In lieu of providing project-based assistance under subparagraph (A) or (B), the Secretary may require certain units in unsubsidized projects to contain use restrictions providing that such units will be available to and affordable by very low-income families for the remaining useful life of the project, as defined by the Secretary, if—

"(i) the Secretary matches any reduction in units otherwise required to be assisted with project-based assistance under subparagraph (A) or (B) with at least an equivalent increase in units made affordable to very low-income persons within unsubsidized projects;

"(ii) low-income tenants residing in units otherwise requiring project-based assistance under subparagraph (A) or (B) upon disposition receive section 8 tenant-based assistance; and

"(iii) the units described in clause (i) are located within the same market area.

"(D) CONTRACT REQUIREMENTS FOR UNSUBSIDIZED PROJECTS.—Notwithstanding actions taken pursuant to subparagraph (C), in unsubsidized projects, the contract shall at least be sufficient to provide—

"(i) project-based rental assistance for all units that are covered or were covered immediately before foreclosure or acquisition by an assistance contract under—

"(I) section 8(b)(2) of the United States Housing Act of 1937 (as such section existed before October 1, 1983) (new construction and substantial rehabilitation); section 8(b) of such Act (property disposition); section 8(d)(2) of such Act (project-based certificates); section 8(e)(2) of such Act (moderate rehabilitation); section 23 of such Act (as in effect before January 1, 1975); or section 101 of the Housing and Urban Development Act of 1965 (rent supplements); or

"(II) section 8 of the United States Housing Act of 1937, following conversion from section 101 of the Housing and Urban Development Act of 1965; and

"(ii) tenant-based assistance under section 8 of the United States Housing Act of 1937 for tenants currently residing in units that were covered by an assistance contract under the Loan Management Set-Aside program under section 8(b) of the United States Housing Act of 1937 immediately before foreclosure or acquisition of the project by the Secretary.

"(2) ANNUAL CONTRIBUTION CONTRACTS.—In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, enter into annual contribution contracts with public housing agencies to provide tenant-based assistance under section 8 of the United States Housing Act of 1937 to all low-income families who are eligible for such assistance on the date that the project is acquired by the purchaser. The Secretary shall take action under this paragraph only after making a determination that there is available in the area an adequate supply of habitable affordable housing for low-income families. Actions taken pursuant to this paragraph may be taken in connection with not more than 10 percent of the aggregate number of units in subsidized or formerly subsidized projects disposed of by the Secretary annually.

"(3) OTHER ASSISTANCE.—

"(A) IN GENERAL.—In accordance with the authority provided under the National Housing Act, reduce the selling price, apply use or rent restrictions on certain units, or provide other financial assistance to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure, or after sale by the Secretary, on terms which will ensure that—

"(i) at least those units otherwise required to receive project-based section 8 assistance pursuant to subparagraphs (A), (B), or (D) of paragraph (1) are available to and affordable by low-income persons; and

"(ii) for the remaining useful life of the project, as defined by the Secretary, there shall be in force such use or rent restrictions as the Secretary may prescribe.

"(B) DEFINITION.—A unit shall be considered affordable under this paragraph if—

"(i) for very low-income tenants, the rent for such unit does not exceed 30 percent of 50 percent of the area median income, as determined by the Secretary, with adjustments for family size; and

"(ii) for low-income tenants other than very low-income tenants, the rent for such unit does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, with adjustments for family size.

"(C) VERY LOW-INCOME TENANTS.—The Secretary shall provide assistance under section 8 of the United States Housing Act of 1937 to any very low-income tenant currently residing in a unit otherwise required to receive project-based assistance under section 8, pursuant to subparagraph (A), (B), or (D) of paragraph (1), if the rents charged such tenants as a result of actions taken pursuant to this paragraph exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937.

"(4) TRANSFER FOR USE UNDER OTHER PROGRAMS OF THE SECRETARY.—

"(A) IN GENERAL.—Enter into an agreement providing for the transfer of a multifamily housing project—

"(i) to a public housing agency for use of the project as public housing; or

"(ii) to an owner or another appropriate entity for use of the project under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

"(B) REQUIREMENTS FOR AGREEMENT.—The agreement described in subparagraph (A) shall—

"(i) contain such terms, conditions, and limitations as the Secretary determines appropriate, including requirements to assure use of the project under the public housing, section 202, and section 811 programs; and

"(ii) ensure that no current tenant will be displaced as a result of actions taken under this paragraph.

"(f) OTHER ASSISTANCE.—In addition to the actions authorized by subsection (e), the Secretary may take any of the following actions:

"(1) SHORT-TERM LOANS.—Provide short-term loans to facilitate the sale of multifamily housing projects to nonprofit organizations or to public agencies if—

"(A) authority for such loans is provided in advance in an appropriations Act;

"(B) such loans are for a term of not more than 5 years;

"(C) the Secretary is presented with satisfactory documentation, evidencing a commitment of permanent financing to replace such short-term loan, from a lender who meets standards set forth by the Secretary; and

"(D) the terms of such loans are consistent with prevailing practices in the marketplace or the provision of such loans results in no cost to the Government, as defined in section 502 of the Congressional Budget Act.

"(2) TENANT-BASED ASSISTANCE.—In connection with projects referred to in subsection (e), make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to very low-income families (as defined in section 3(b)(2) of the United States Housing Act of 1937) that do not otherwise qualify for project-based assistance.

"(3) ALTERNATIVE USES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to notice to and comment from existing tenants, allow not more than—

"(i) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any 1-year period to be made available for uses other than rental or cooperative uses, including low-income homeownership opportunities, or in any particular project, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

"(ii) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any 1-year period to be used in any manner, if the Secretary and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

"(B) DISPLACEMENT PROTECTION.—The Secretary shall make available tenant-based rental assistance under section 8 of the United States Housing Act of 1937 to any tenant displaced as a result of actions taken by the Secretary pursuant to subparagraph (A), and the Secretary shall take such actions as the Secretary determines necessary to ensure the successful use of any tenant-based assistance.

"(g) AUTHORIZATION OF USE OR RENT RESTRICTIONS IN UNSUBSIDIZED PROJECTS.—In carrying out the goals specified in subsection (a), the Secretary may require certain units in unsubsidized projects to contain use or rent restrictions providing that such units will be available to and affordable by very low-income persons for the remaining useful life of the property, as defined by the Secretary.

"(h) CONTRACT REQUIREMENTS.—

"(1) CONTRACT TERM.—

"(A) IN GENERAL.—Contracts for project-based rental assistance under section 8 of the United States Housing Act of 1937 provided pursuant to this section shall be for a term of not more than 15 years; and

"(B) CONTRACT TERM OF LESS THAN 15 YEARS.—Notwithstanding subparagraph (A), to the extent that units receive project-based assistance for a contract term of less than 15

years, the Secretary shall require that rents charged to tenants for such units not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

"(2) CONTRACT RENT.—

"(A) IN GENERAL.—The Secretary shall set contract rents for section 8 project-based rental contracts issued under this section at levels that, in conjunction with other resources available to the purchaser, provide for the necessary costs of rehabilitation of such project and do not exceed the percentage of the existing housing fair market rents for the area (as determined by the Secretary under section 8(c) of the United States Housing Act of 1937) as the Secretary may prescribe.

"(B) UP-FRONT GRANTS AND LOANS.—If such an approach is determined to be more cost-effective, the Secretary may utilize the budget authority provided for project-based section 8 contracts issued under this section to—

"(i) provide project-based section 8 rental assistance; and

"(ii)(I) provide up-front grants for the necessary cost of rehabilitation; or

"(II) pay for any cost to the Government, as defined in section 502 of the Congressional Budget Act, for loans made pursuant to subsection (f)(1).

"(i) DISPOSITION PLAN.—

"(1) IN GENERAL.—Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, the initial sales price that is acceptable to the Secretary, and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with this section. The initial sales price shall reflect the intended use of the property after sale.

"(2) COMMUNITY AND TENANT INPUT INTO DISPOSITION PLANS AND SALES.—

"(A) IN GENERAL.—In carrying out this section, the Secretary shall develop procedures to obtain appropriate and timely input into disposition plans from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project.

"(B) TENANT ORGANIZATIONS.—The Secretary shall develop procedures to facilitate, where feasible and appropriate, the sale of multifamily housing projects to existing tenant organizations with demonstrated capacity or to public or nonprofit entities which represent or are affiliated with existing tenant organizations.

"(C) TECHNICAL ASSISTANCE.—

"(i) USE OF FUNDS.—To carry out the procedures developed under subparagraphs (A) and (B), the Secretary is authorized to provide technical assistance, directly or indirectly, and to use amounts appropriated for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or under this section for the provision of technical assistance under this section.

"(ii) SOURCE OF FUNDS.—Recipients of technical assistance funding under the Emergency Low Income Housing Preservation Act of 1987, the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, or under this section shall be permitted to provide technical assistance to the extent of such funding under any of such programs or under this section, notwithstanding the source of funding.

"(j) RIGHT OF FIRST REFUSAL.—

"(1) PROCEDURE.—

"(A) NOTIFICATION BY SECRETARY OF THE ACQUISITION OF TITLE.—Not later than 30 days after acquiring title to a project, the Secretary shall notify the unit of general local government and the State agency or agencies designated by the Governor of the acquisition of such title.

"(B) EXPRESSION OF INTEREST.—Not later than 45 days after receiving notification from the Secretary under subparagraph (A), the unit of general local government or designated State agency may submit to the Secretary a preliminary expression of interest in the project. The Secretary may take such actions as may be necessary to require the unit of general local government or designated State agency to substantiate such interest.

"(C) TIMELY EXPRESSION OF INTEREST.—If the unit of general local government or designated State agency has expressed interest in the project before the expiration of the 45-day period referred to in subparagraph (B), and has substantiated such interest if requested, the Secretary, upon approval of a disposition plan for a project, shall notify the unit of general local government and designated State agency of the terms and conditions of the disposition plan and give the unit of general local government or designated State agency not more than 90 days after the date of such notification to make an offer to purchase the project.

"(D) NO TIMELY EXPRESSION OF INTEREST.—If the unit of general local government or designated State agency does not express interest before the expiration of the 45-day period referred to in subparagraph (B), or does not substantiate an expressed interest if requested, the Secretary, upon approval of a disposition plan, may offer the project for sale to any interested person or entity.

"(2) ACCEPTANCE OF OFFERS.—Where the Secretary has given the unit of general local government or designated State agency 90 days to make an offer to purchase the project, the Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the goals specified in subsection (a) by actions that include extension of the duration of low-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low-income affordability restrictions beyond the period of assistance contemplated by the attachment of assistance pursuant to subsection (e). If the Secretary and the unit of general local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

"(3) PURCHASE BY UNIT OF GENERAL LOCAL GOVERNMENT OR DESIGNATED STATE AGENCY.—Notwithstanding any other provision of law, a unit of general local government (including a public housing agency) or designated State agency may purchase a subsidized or formerly subsidized project in accordance with this subsection.

"(4) APPLICABILITY.—This subsection shall apply to projects that are acquired on or after the effective date of this subsection. With respect to projects acquired before such effective date, the Secretary may apply—

"(A) the requirements of paragraphs (2) and (3) of section 203(e) as such paragraphs existed immediately before the effective date of this subsection; or

"(B) the requirements of paragraphs (1) and (2) of this subsection, if the Secretary gives the unit of general local government or designated State agency—

"(i) 45 days to express interest in the project; and

"(ii) if the unit of general local government or designated State agency expresses interest in the project before the expiration of the 45-day period, and substantiates such interest if requested, 90 days from the date of notification of the terms and conditions of the disposition plan to make an offer to purchase the project.

"(k) DISPLACEMENT OF TENANTS AND RELOCATION ASSISTANCE.—

"(1) IN GENERAL.—Whenever tenants will be displaced as a result of the disposition of, or repairs to, a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance which may be available. In the case of a multifamily housing project that is not owned by the Secretary (and for which the Secretary is not mortgagee in possession), the Secretary shall require the owner of the project to carry out the requirements of this paragraph.

"(2) RIGHTS OF DISPLACED TENANTS.—The Secretary shall assure for any such tenant (who continues to meet applicable qualification standards) the right—

"(A) to return, whenever possible, to a repaired unit;

"(B) to occupy a unit in another multifamily housing project owned by the Secretary;

"(C) to obtain housing assistance under the United States Housing Act of 1937; or

"(D) to receive any other available relocation assistance as the Secretary determines to be appropriate.

"(l) MORTGAGE AND PROJECT SALES.—

"(1) IN GENERAL.—The Secretary may not approve the sale of any loan or mortgage held by the Secretary (including any loan or mortgage owned by the Government National Mortgage Association) on any subsidized project or formerly subsidized project, unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of such loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the assignment of the loan or mortgage on such project to the Secretary.

"(2) SALE OF CERTAIN PROJECTS.—The Secretary may not approve the sale of any subsidized project—

"(A) that is subject to a mortgage held by the Secretary; or

"(B) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage, unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project.

"(3) MORTGAGE SALES TO STATE AND LOCAL GOVERNMENTS.—Notwithstanding any provision of law that may require competitive sales or bidding, the Secretary may carry out negotiated sales of subsidized or formerly subsidized mortgages held by the Secretary, without the competitive selection of purchasers or intermediaries, to units of general local government or State agencies, or groups of investors that include at least one such unit of general local government or State agency, if the negotiations are conducted with such agencies, except that—

"(A) the terms of any such sale shall include the agreement of the purchasing agency or unit of local government or State agency to act as mortgagee or owner of a beneficial interest in such mortgages, in a manner consistent with maintaining the projects that are subject to such mortgages for occupancy by the general tenant group intended to be served by the applicable mortgage insurance program, including, to the extent the Secretary determines appropriate, authorizing such unit of local government or State agency to enforce the provisions of any regulatory agreement or other program requirements applicable to the related projects; and

"(B) the sales prices for such mortgages shall be, in the determination of the Secretary, the best prices that may be obtained for such mortgages from a unit of general local government or State agency, consistent with the expectation and intention that the projects financed will be retained for use under the applicable mortgage insurance program for the life of the initial mortgage insurance contract.

"(4) SALE OF MORTGAGES COVERING UNSUBSIDIZED PROJECTS.—Notwithstanding any other provision of law, the Secretary may sell mortgages held on unsubsidized projects on such terms and conditions as the Secretary may prescribe.

"(m) REPORT TO CONGRESS.—Not later than June 1 of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report describing the status of multifamily housing projects owned by or subject to mortgages held by the Secretary, which report shall include—

"(1) the name, address, and size of each project;

"(2) the nature and date of assignment;

"(3) the status of the mortgage;

"(4) the physical condition of the project;

"(5) an occupancy profile of the project, including the income, family size, and race of current residents as well as the rents paid by such residents;

"(6) the proportion of units in a project that are vacant;

"(7) the date on which the Secretary became mortgagee in possession;

"(8) the date and conditions of any foreclosure sale;

"(9) the date of acquisition by the Secretary;

"(10) the date and conditions of any property disposition sale;

"(11) a description of actions undertaken pursuant to this section, including—

"(A) a comparison of results between actions taken after enactment of the Housing and Community Development Act of 1993 and actions taken in years prior to such enactment;

"(B) a description of any impediments to the disposition or management of multifamily housing projects, together with a recommendation of proposed legislative or regulatory changes designed to ameliorate such impediments;

"(C) a description of actions taken to restructure or commence foreclosure on delinquent multifamily mortgages held by the Department; and

"(D) a description of actions taken to monitor and prevent the default of multifamily housing mortgages held by the Federal Housing Administration;

"(12) a description of any of the functions performed in connection with this section that are contracted out to public or private entities or to States, including—

"(A) the costs associated with such delegation;

"(B) the implications of contracting out or delegating such functions for current Department field or regional personnel, including anticipated personnel or work load reductions;

"(C) necessary oversight required by Department personnel, including anticipated personnel hours devoted to such oversight;

"(D) a description of any authority granted to such public or private entities or States in conjunction with the functions that have been delegated or contracted out or that are not otherwise available for use by Department personnel; and

"(E) the extent to which such public or private entities or States include tenants of multifamily housing projects in the disposition planning for such projects;

"(13) a description of the activities carried out under subsection (j) during the preceding year; and

"(14) a description and assessment of the rules, guidelines, and practices governing the Department's management of multifamily housing projects that are owned by the Secretary (or for which the Secretary is mortgagee in possession) as well as the steps that the Secretary has taken or plans to take to improve the management performance of the Department.".

(3) EFFECTIVE DATE.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection. The notice shall invite public comments, and the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

(b) REPEAL OF THE NATIONAL SMALL BUSINESS TREE PLANTING PROGRAM.—Section 24 of the Small Business Act (15 U.S.C. 651) is repealed.

TITLE IV—MONEY LAUNDERING

SEC. 401. SHORT TITLE.

This title may be cited as the "Money Laundering Suppression Act of 1994".

SEC. 402. REFORM OF CTR EXEMPTION REQUIREMENTS TO REDUCE NUMBER AND SIZE OF REPORTS CONSISTENT WITH EFFECTIVE LAW ENFORCEMENT.

(a) IN GENERAL.—Section 5313 of title 31, United States Code, is amended by adding at the end the following new subsections:

"(d) MANDATORY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(5), a depository institution from the reporting requirements of subsection (a) (and regulations prescribed under such subsection) with respect to transactions between the depository institution and the following categories of entities:

"(A) Another depository institution.

"(B) A department or agency of the United States, any State, or any political subdivision of any State, including any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States, the State, or the political subdivision.

"(C) Any business or category of business the reports on which have little or no value for law enforcement purposes.

"(2) NOTICE OF EXEMPTION.—The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not less frequently than once during each year) a list of all the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a) (and regulations prescribed under such subsection).

"(e) DISCRETIONARY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(5), a depository institution from the reporting requirements of subsection (a) (and regulations prescribed under such subsection) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

"(2) QUALIFIED BUSINESS CUSTOMER DEFINED.—For purposes of this subsection, the term 'qualified business customer' means a business which—

"(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

"(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a) (and regulations prescribed under such subsection); and

"(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

"(3) CRITERIA FOR EXEMPTION.—The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

"(4) GUIDELINES.—

"(A) IN GENERAL.—The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

"(B) CONTENTS.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

"(5) ANNUAL REVIEW.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

"(A) review, at least once during each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

"(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

"(6) 2-YEAR PHASE-IN PROVISION.—During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

"(f) PROVISIONS APPLICABLE TO MANDATORY AND DISCRETIONARY EXEMPTIONS.—

"(1) LIMITATION ON LIABILITY OF DEPOSITORY INSTITUTIONS.—No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e), unless the institution—

"(A) knowingly files false or incomplete information to the Secretary with respect to the transaction or the customer engaging in the transaction; or

"(B) has reason to believe at the time the exemption is granted or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

"(2) COORDINATION WITH OTHER PROVISIONS.—Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including—

"(A) the authority of the Secretary, under section 5318(a)(5), to revoke such exemption at any time; and

"(B) any requirement to report, or any authority to require a report on, any possible violation of any law or regulation or any suspected criminal activity.

"(g) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act.".

(b) REPORT REDUCTION GOAL; REPORTS.—

(1) IN GENERAL.—In implementing the amendment made by subsection (a), the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31, United States Code, by not less than 30 percent of the number filed during the year preceding the date of enactment of this Act.

(2) INTERIM REPORT.—The Secretary of the Treasury shall submit a report to the Congress not later than the end of the 180-day period beginning on the date of enactment of this Act on the progress made by the Secretary in implementing the amendment made by subsection (a).

(3) ANNUAL REPORT.—The Secretary of the Treasury shall submit an annual report to the Congress after the end of each of the first 5 calendar years which begin after the date of enactment of this Act on the extent to which the Secretary has reduced the overall number of currency transaction reports required to be filed with the Secretary pursuant to section 5313(a) of title 31, United States Code, consistently with the purposes of such section and effective law enforcement.

(c) STREAMLINED CURRENCY TRANSACTION REPORTS.—The Secretary of the Treasury shall take such action as may be appropriate to redesign the format of reports required to be filed by any financial institution (as defined in section 5312(a)(2) of title 31, United States Code) under section 5313(a) of title 31, United States Code, to eliminate the need to report information which has little or no value for law enforcement purposes and reduce the time and effort required to prepare such report for filing by any such financial institution under such section.

SEC. 403. SINGLE DESIGNEE FOR REPORTING OF SUSPICIOUS TRANSACTIONS.

(a) IN GENERAL.—Section 5318(g) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) SINGLE DESIGNEE FOR REPORTING SUSPICIOUS TRANSACTIONS.—

"(A) IN GENERAL.—In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

"(B) DUTY OF DESIGNEE.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to the appropriate law enforcement or supervisory agency.

"(C) COORDINATION WITH OTHER REPORTING REQUIREMENTS.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any provision of law other than this subsection.

"(D) REPORTS.—

"(i) REPORTS REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress at the times required under clause (ii) on the number of suspicious transactions reported to the officer or agency designated under subparagraph (A) during the period covered by the report and the disposition of such reports.

"(ii) TIME FOR SUBMITTING REPORTS.—The first report required under clause (i) shall be filed before the end of the 1-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, and each subsequent report shall be filed, not later than 90 days after the end of each of the 5 calendar years which begin after such date of enactment.".

(b) DESIGNATION REQUIRED TO BE MADE EXPEDITIOUSLY.—The initial designation of an officer or agency of the United States pursuant to the amendment made by subsection (a) shall be made before the end of the 180-day period beginning on the date of enactment of this Act.

SEC. 404. IMPROVEMENT OF IDENTIFICATION OF MONEY LAUNDERING SCHEMES.

(a) ENHANCED TRAINING, EXAMINATIONS, AND REFERRALS BY BANKING AGENCIES.—Before the end of the 6-month period beginning on the date of enactment of this Act, each appropriate Federal banking agency shall, in consultation with the Secretary of the Treasury and other appropriate law enforcement agencies—

(1) review and enhance training and examination procedures to improve the identification of money laundering schemes involving depository institutions; and

(2) review and enhance procedures for referring cases to any other appropriate law enforcement agency.

(b) IMPROVED REPORTING OF CRIMINAL SCHEMES BY LAW ENFORCEMENT AGENCIES.—The Secretary of the Treasury and each appropriate law enforcement agency shall, on a regular basis, provide information regarding money laundering schemes and activities involving depository institutions to each appropriate Federal banking agency to enhance the agency's ability to examine for and identify money laundering.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Federal banking agencies shall jointly submit a report to the Congress on the progress made in carrying out subsection (a) and the usefulness of information received pursuant to subsection (b).

(d) DEFINITIONS.—The terms "appropriate Federal banking agency" and "Federal banking agencies" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 405. NEGOTIABLE INSTRUMENTS DRAWN ON FOREIGN BANKS SUBJECT TO RECORDKEEPING AND REPORTING REQUIREMENTS.

Section 5312(a)(3) of title 31, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) as the Secretary of the Treasury shall provide by regulation for purposes of section 5316, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.".

SEC. 406. IMPOSITION OF CIVIL MONEY PENALTIES BY APPROPRIATE FEDERAL BANKING AGENCIES.

Section 5321 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(e) DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

"(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1), and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions to the appropriate Federal banking agencies.

"(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

"(3) TERMS AND CONDITIONS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

"(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution' and 'Federal banking agencies' have the same meanings as in section 3 of the Federal Deposit Insurance Act.".

SEC. 407. UNIFORM STATE LICENSING AND REGULATION OF CHECK CASHING, CURRENCY EXCHANGE, AND MONEY TRANSMITTING BUSINESSES.

(a) UNIFORM LAWS AND ENFORCEMENT.—For purposes of preventing money laundering and protecting the payment system from fraud and abuse, it is the sense of the Congress that the several States should—

(1) establish uniform laws for licensing and regulating businesses which—

(A) provide check cashing, currency exchange, or money transmitting or remittance services, or issue or redeem money orders, travelers' checks, and other similar instruments; and

(B) are not depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); and

(2) provide sufficient resources to the appropriate State agency to enforce such laws and regulations prescribed pursuant to such laws.

(b) MODEL STATUTE.—It is the sense of the Congress that the several States should develop, through the auspices of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or such other forum as the States may determine to be appropriate, a model statute to carry out the goals described in subsection (a) which would include the following:

(1) LICENSING REQUIREMENTS.—A requirement that any business described in subsection (a)(1) be licensed and regulated by an appropriate State agency in order to engage in any such activity within the State.

(2) LICENSING STANDARDS.—A requirement that—

(A) in order for any business described in subsection (a)(1) to be licensed in the State, the appropriate State agency shall review and approve—

(i) the business record and the capital adequacy of the business seeking the license; and

(ii) the competence, experience, integrity, and financial ability of any individual who—

(I) is a director, officer, or supervisory employee of such business; or

(II) owns or controls such business; and

(B) any record, on the part of any business seeking the license or any person referred to in subparagraph (A)(ii), of—

(i) any criminal activity;

(ii) any fraud or other act of personal dishonesty;

(iii) any act, omission, or practice which constitutes a breach of a fiduciary duty; or

(iv) any suspension or removal, by any agency or department of the United States or any State,

from participation in the conduct of any federally or State licensed or regulated business;

may be grounds for the denial of any such license by the appropriate State agency.

(3) PROCEDURES TO ENSURE COMPLIANCE WITH FEDERAL CASH TRANSACTION REPORTING REQUIREMENTS.—A civil or criminal penalty for operating any business referred to in paragraph (1) without establishing and complying with appropriate procedures to ensure compliance with subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions).

(4) CRIMINAL PENALTIES FOR OPERATION OF BUSINESS WITHOUT A LICENSE.—A criminal penalty for operating any business referred to in paragraph (1) without a license within the State after the end of an appropriate transition period beginning on the date of enactment of such model statute by the State.

(c) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of—

(1) the progress made by the several States in developing and enacting a model statute which—

(A) meets the requirements of subsection (b); and

(B) furthers the goals of—

(i) preventing money laundering by businesses which are required to be licensed under any such model statute; and

(ii) protecting the payment system, including the receipt, payment, collection, and clearing of checks, from fraud and abuse by such businesses; and

(2) the adequacy of—

(A) the activity of the several States in enforcing the requirements of such statute; and

(B) the resources made available to the appropriate State agencies for such enforcement activity.

(d) REPORT REQUIRED.—Before the end of the 3-year period beginning on the date of enactment of this Act and by the end of each of the first two 1-year periods beginning after the end of such 3-year period, the Secretary of the Treasury shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection (c), together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate.

(e) RECOMMENDATIONS IN CASES OF INADEQUATE REGULATION AND ENFORCEMENT BY STATES.—If the Secretary of the Treasury determines that any State has been unable—

(1) to enact a statute which meets the requirements described in subsection (b);

(2) to undertake adequate activity to enforce such statute; or

(3) to make adequate resources available to the appropriate State agency for such enforcement activity;

the report submitted pursuant to subsection (d) shall contain recommendations designed to facilitate enactment and enforcement of such a statute.

(f) FEDERAL FUNDING STUDY.—

(1) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study to identify possible available sources of Federal funding to cover costs to the States to implement this section.

(2) REPORT.—The Secretary of the Treasury shall submit a report to the Congress on the study conducted pursuant to paragraph (1) before the end of the 18-month period beginning on the date of enactment of this Act.

SEC. 408. REGISTRATION OF MONEY TRANSMITTING BUSINESSES TO PROMOTE EFFECTIVE LAW ENFORCEMENT.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—The Congress finds the following:

(A) Money transmitting businesses are subject to the recordkeeping and reporting requirements of subchapter II of chapter 53 of title 31, United States Code.

(B) Money transmitting businesses are largely unregulated businesses and are frequently used in sophisticated schemes to—

(i) transfer large amounts of money which are the proceeds of unlawful enterprises; and

(ii) evade the requirements of subchapter II of chapter 53 of title 31, United States Code, the Internal Revenue Code of 1986, and other laws of the United States.

(C) Information on the identity of money transmitting businesses and the names of the persons who own or control, or are officers or employees of, a money transmitting business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings.

(2) PURPOSE.—It is the purpose of this section to establish a registration requirement for businesses engaged in providing check cashing, currency exchange, or money transmitting or remittance services, or issuing or redeeming money orders, travelers' checks, and other similar instruments to assist the Secretary of the Treasury, the Attorney General, and other supervisory and law enforcement agencies to effectively enforce the criminal, tax, and regulatory laws and prevent such money transmitting businesses from engaging in illegal activities.

(b) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following new section:

"§5329. Registration of money transmitting businesses

"(a) REGISTRATION WITH SECRETARY OF THE TREASURY REQUIRED.—

"(1) IN GENERAL.—Any person who owns or controls a money transmitting business which is not a depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act) shall register the business (whether or not the business is licensed as a money transmitting business in any State) with the Secretary of the Treasury before the end of the 180-day period beginning on the later of—

"(A) the date of enactment of this section; or

"(B) the date the business is established.

"(2) FORM AND MANNER OF REGISTRATION.—Subject to the requirements of subsection (b), the Secretary of the Treasury shall prescribe, in regulations, the form and manner for registering a money transmitting business pursuant to paragraph (1).

"(3) BUSINESSES REMAIN SUBJECT TO STATE LAW.—This section shall not be construed as superseding any requirement of State law relating to money transmitting businesses operating in such State.

"(4) FALSE AND INCOMPLETE INFORMATION.—The filing of false or materially incomplete information in connection with the registration of a money transmitting business shall be considered as a failure to comply with the requirements of this subsection.

"(b) CONTENTS OF REGISTRATION.—The registration of a money transmitting business under subsection (a) shall include the following information:

"(1) The name and location of the business.

"(2) The name and address of each person who—

"(A) owns or controls the business;

"(B) is a director or officer of the business; or

"(C) otherwise participates in the conduct of the affairs of the business.

"(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act).

"(4) An estimate of the volume of business to be reported annually.

"(5) Such other information as the Secretary of the Treasury may require.

"(c) AGENTS OF MONEY TRANSMITTING BUSINESSES.—

"(1) MAINTENANCE OF LISTS OF AGENTS OF MONEY TRANSMITTING BUSINESSES.—Pursuant to regulations which the Secretary of the Treasury shall prescribe, each money transmitting business shall—

"(A) maintain a list containing the names and addresses of all persons authorized to act as an agent for such business in connection with activities described in subsection (d)(1)(A) and such other information about such agents as the Secretary may require; and

"(B) make the list and other information available on request to any appropriate law enforcement agency.

"(2) TREATMENT OF AGENT AS MONEY TRANSMITTING BUSINESS.—The Secretary of the Treasury shall prescribe regulations establishing, on the basis of such criteria as the Secretary determines to be appropriate, a threshold point for treating an agent of a money transmitting business as a money transmitting business for purposes of this section.

"(d) DEFINITIONS.—For purposes of this section—

"(1) MONEY TRANSMITTING BUSINESS.—The term 'money transmitting business' means any business other than the United States Postal Service which—

"(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments;

"(B) is required to file reports under section 5313; and

"(C) is not a depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act).

"(2) MONEY TRANSMITTING SERVICE.—The term 'money transmitting service' includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal reserve bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

"(e) CIVIL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—

"(1) IN GENERAL.—Any person who fails to comply with the money transmitting business registration requirements under subsection (a) or regulations prescribed under such subsection shall be liable to the United States for a civil penalty of $5,000 for each such violation.

"(2) CONTINUING VIOLATION.—Each day a violation described in paragraph (1) continues shall constitute a separate violation for purposes of such paragraph.

"(3) ASSESSMENTS.—Any penalty imposed under this subsection shall be assessed and collected by the Secretary of the Treasury in the manner provided in section 5321 and any such assessment shall be subject to the provisions of such section.".

(c) CRIMINAL PENALTY FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—Section 1960(b)(1) of title 18, United States Code, is amended to read as follows:

"(1) the term 'illegal money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

"(A) is intentionally operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law; or

"(B) fails to comply with the money transmitting business registration requirements under section 5329 of title 31, United States Code, or regulations prescribed under such section;".

(d) CIVIL FORFEITURE.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "or of section 1956 or 1957 of this title," and inserting ", of section 1956, 1957, or 1960 of this title,".

(e) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5328 the following new item:

"5329. Registration of money transmitting businesses.".

SEC. 409. CRIMINAL AND CIVIL PENALTY FOR STRUCTURING DOMESTIC AND INTERNATIONAL TRANSACTIONS.

(a) CRIMINAL PENALTY.—Section 5324 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(c) CRIMINAL PENALTY.—

"(1) IN GENERAL.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

"(2) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.".

(b) AMENDMENT RELATING TO CIVIL PENALTY.—Section 5321(a)(4)(A) of title 31, United States Code, is amended by striking "willfully".

(c) TECHNICAL AND CONFORMING AMENDMENT.—Subsections (a) and (b) of section 5322 of title 31, United States Code, are amended by inserting "or 5324" after "section 5315" each place such term appears.

SEC. 410. GAO STUDY OF CASHIERS' CHECKS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study to determine—

(1) the extent to which the practice of issuing of cashiers' checks by financial institutions is vulnerable to money laundering schemes;

(2) the extent to which additional record-keeping requirements should be imposed on financial institutions which issue cashiers' checks; and

(3) such other factors relating to the use and regulation of cashiers' checks as the Comptroller General determines to be appropriate.

(b) REPORT REQUIRED.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions in connection with the study conducted pursuant to subsection (a); and

(2) such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

TITLE V—FAIR TRADE IN FINANCIAL SERVICES

SEC. 501. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1994".

SEC. 502. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKING ORGANIZATIONS.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following new section:

"SEC. 18. NATIONAL TREATMENT.

"(a) PURPOSE.—The purpose of this section is to encourage foreign countries to accord national treatment to United States banking organizations that operate or seek to operate in those countries.

"(b) IDENTIFYING COUNTRIES THAT DENY NATIONAL TREATMENT TO UNITED STATES BANKS OR BANK HOLDING COMPANIES.—The Secretary shall identify the extent to which foreign countries deny national treatment to United States banking organizations—

"(1) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (or update thereof); or

"(2) based on more recent information that the Secretary deems appropriate.

"(c) DETERMINING WHETHER DENIAL OF NATIONAL TREATMENT HAS SIGNIFICANT ADVERSE EFFECT.—

"(1) IN GENERAL.—The Secretary shall determine whether the denial of national treatment to United States banking organizations by a foreign country identified under subsection (b) has a significant adverse effect on such organizations.

"(2) FACTORS TO BE CONSIDERED.—In determining whether and to what extent a foreign country denies national treatment to United States banking organizations, and in determining the effect of any such denial on such banking organizations, the Secretary shall consider appropriate factors, including—

"(A) the size of the foreign country's markets for the financial services involved, and the extent to which United States banking organizations operate or seek to operate in those markets;

"(B) the extent to which United States banking organizations may participate in developing regulations, guidelines, or other policies regarding new products, services, and markets in the foreign country;

"(C) the extent to which the foreign country issues written regulations, guidelines, or other policies applicable to United States banking organizations operating or seeking to operate in the foreign country that are—

"(i) prescribed after adequate notice and opportunity for comment;

"(ii) readily available to the public; and

"(iii) prescribed in accordance with objective standards that effectively prevent arbitrary and capricious determinations;

"(D) the extent to which United States banking organizations may offer foreign exchange services in the foreign country; and

"(E) the effects of the regulatory policies of the foreign country on—

"(i) the lending policies of the central bank of that country;

"(ii) capital requirements applicable in that country;

"(iii) the regulation of deposit interest rates by that country;

"(iv) restrictions on the operation and establishment of branches in that country; and

"(v) restrictions on access to automated teller machine networks in that country.

"(d) PUBLICATION OF DETERMINATION.—

"(1) IN GENERAL.—If the Secretary determines under subsection (c) that the denial of national treatment to United States banking organizations by a foreign country has a significant adverse effect on such organizations, the Secretary—

"(A) may, after initiating negotiations in accordance with subsection (g), and after consultation in accordance with subsection (i), publish that determination in the Federal Register;

"(B) shall, not less frequently than annually, in consultation with any department or agency that the Secretary deems appropriate, review each such determination to determine whether it should be rescinded; and

"(C) shall inform State bank supervisors of the publication of that determination.

"(2) EXCEPTION FOR COUNTRIES THAT ARE PARTIES TO CERTAIN AGREEMENTS GOVERNING FINANCIAL SERVICES.—Paragraph (1) shall not apply to a foreign country to the extent that any authority under that paragraph would permit action to be taken that would be inconsistent with a bilateral or multilateral agreement (including any dispute resolution procedures contained in such agreement) that governs financial services that—

(A) the President entered into with that country; and

(B) the Senate and House of Representatives approved;

before the date of enactment of this section.

"(e) SANCTIONS.—

"(1) ACTION BY SECRETARY OF TREASURY.—

"(A) IN GENERAL.—The Secretary may, after consultation in accordance with subsection (i), recommend to the appropriate Federal banking agency that such agency deny or suspend consideration of a request for authorization filed after the date of publication of a determination under subsection (d)(1) by a person of a foreign country listed in such publication if the Secretary determines that—

"(i) such action would assist the United States in negotiations to eliminate discrimination against United States banking organizations;

"(ii) negotiations undertaken pursuant to subsection (g) are not likely to result in an agreement that eliminates the denial of national treatment; or

"(iii) the country has not adequately adhered to an agreement reached as a result of negotiations undertaken pursuant to subsection (g).

"(B) EXERCISE OF AUTHORITY.—The authority of subparagraph (A) shall be exercised according to the specific direction (if any) of the President.

"(C) COMPLIANCE EXCEPTIONS.—The appropriate Federal banking agency shall comply with the recommendation of the Secretary made under subparagraph (A), unless the agency determines, in writing, and transmits such determination to the Secretary and to the Congress, that such recommendation—

"(i) would likely result in a serious impairment to the safe and sound operation of the United States banking system; or

"(ii) would compromise the ability of a Federal banking agency to resolve a failing or failed financial institution because a foreign banking institution otherwise barred by an action under subparagraph (A) represents the only bona fide reasonable offer available to the Federal banking agency.

"(2) NO AFFECT ON CERTAIN AGREEMENTS.—The exercise of authority under this subsection does not affect any obligation of the United States to pursue dispute resolution procedures pursuant to any international agreement governing financial services, approved by the House of Representatives and the Senate, with respect to a dispute arising out of any obligation under that agreement.

"(f) EXEMPTIONS FROM SANCTIONS.—

"(1) IN GENERAL.—Subsection (e) does not apply to the subsidiaries in the United States of a person of a foreign country if the Secretary determines that the banking laws and regulations of the foreign country, as actually applied, meet or exceed—

"(A) the standards for treatment of subsidiaries of United States banking organizations contained in the Second Banking Directive, and in any amendment to the Second Banking Directive, if the Secretary determines that such amendment—

"(i) does not restrict any operation, activity, or authority to expand any operation or activity, permitted under those standards, of any subsidiary in the foreign country of any such bank or bank holding company; or

"(ii) is in accordance with national treatment of subsidiaries of such banking organizations; or

"(B) any set of standards that, taken as a whole, is no less favorable to United States banking organizations than the standards referred to in subparagraph (A).

"(2) STANDARDS FOR EXERCISE OF DISCRETION.—In exercising any discretion under this subsection, the Secretary shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and that is operating in the United States—

"(A) the extent to which the foreign country is progressing toward according national treatment to United States banking organizations; and

"(B) whether the foreign country permits United States banking organizations to expand their activities in that country, even if that country determined that the United States did not accord national treatment to the banking organizations of that country.

"(g) NEGOTIATIONS.—

"(1) IN GENERAL.—The Secretary—

"(A) shall initiate negotiations with any foreign country with respect to which a determination made under subsection (c)(1) is in effect; and

"(B) may initiate negotiations with any foreign country which denies national treatment to United States banking organizations to ensure that the foreign country accords national treatment to such organizations.

"(2) EXCEPTIONS.—Paragraph (1) does not require the Secretary to initiate negotiations with a foreign country if the Secretary—

"(A) determines that the negotiations—

"(i) would be so unlikely to result in progress toward according national treatment to United States banking organizations as to be a waste of effort; or

"(ii) would impair the economic interests of the United States; and

"(B) gives written notice of that determination to the chairperson and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(h) REPORT.—

"(1) CONTENTS OF REPORT.—Not later than December 1, 1994, and biennially thereafter, the Secretary shall submit to the Congress a report that—

"(A) specifies the foreign countries identified under subsection (b);

"(B) if a determination is published under subsection (d)(1) with respect to the foreign country, provides the reasons therefor;

"(C) if the Secretary has not made or has rescinded such a determination with respect to the foreign country, provides the reasons therefor;

"(D) describes the results of any negotiations conducted under subsection (g)(1) with the foreign country; and

"(E) discusses the effectiveness of this section in achieving the purpose of this section.

"(2) SUBMISSION OF REPORT.—The report required by paragraph (1) may be submitted as part of a report or update submitted under section 3602 of the Omnibus Trade and Competitiveness Act of 1988.

"(i) CONSULTATION.—Consultation in accordance with this subsection means consultation with the Secretary of State, the Secretary of Commerce, the United States Trade Representative, and the appropriate Federal banking agency.

"(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency'—

"(A) in the case of a noninsured State bank or branch and a representative office of a foreign bank, means the Board of Governors of the Federal Reserve System; and

"(B) in any other case, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(2) BANKING ORGANIZATION.—The term 'banking organization' means—

"(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act, including a branch or subsidiary thereof;

"(B) a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956;

"(C) any company required to file information pursuant to section 4(f)(6) of the Bank Holding Company Act of 1956;

"(D) a savings and loan holding company, as defined in section 10(a)(1)(D) of the Home Owners' Loan Act; and

"(E) any nonbank financial entity, the primary purpose of which is to provide credit or financing, regardless of whether such entity accepts deposits.

"(3) NATIONAL TREATMENT.—A foreign country accords 'national treatment' to United States banking organizations if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banking organizations in like circumstances.

"(4) PERSON OF A FOREIGN COUNTRY.—The term 'person of a foreign country' means—

"(A) a person organized under the laws of the foreign country;

"(B) a person that has its principal place of business in the foreign country;

"(C) an individual who is—

"(i) a citizen of the foreign country, or

"(ii) domiciled in the foreign country; and

"(D) a person that is directly or indirectly controlled by a person or persons described in subparagraph (A) or (B), or by an individual or individuals described in subparagraph (C).

"(5) REQUEST FOR AUTHORIZATION.—The term 'request for authorization'—

"(A) means an application, registration, notice, or other request to commence a financial service or establish a financial services office that is required under title LXII of the Revised Statutes, the International Banking Act of 1978, the Federal Reserve Act, the Home Owners' Loan Act, or the Bank Holding Company Act of 1956; and

"(B) does not include any such request by a company described in section 2(h)(2) of the Bank Holding Company Act of 1956.

"(6) SECOND BANKING DIRECTIVE.—The term 'Second Banking Directive' means the Second Council Directive of December 15, 1989, on the Coordination of Laws, Regulations, and Administrative Provisions Relating to the Taking Up and Pursuit of the Business of Credit Institutions and Amending Directive 77/780/EEC (89/646/EEC).

"(7) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.".

SEC. 503. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES ORGANIZATIONS.

(a) PURPOSE.—The purpose of this section is to encourage foreign countries to accord national treatment to United States securities organizations that operate or seek to operate in those countries.

(b) IDENTIFYING COUNTRIES THAT DENY NATIONAL TREATMENT TO UNITED STATES SECURITIES ORGANIZATIONS.—The Secretary shall identify whether and to what extent foreign countries deny national treatment to United States securities organizations—

(1) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (or update thereof); or

(2) based upon more recent information that the Secretary deems appropriate.

(c) DETERMINING WHETHER DENIAL OF NATIONAL TREATMENT HAS SIGNIFICANT ADVERSE EFFECT.—The Secretary shall determine whether the denial of national treatment to United States securities organizations by a foreign country identified under subsection (b) has a significant adverse effect on such organizations.

(d) PUBLICATION OF DETERMINATION.—

(1) IN GENERAL.—If the Secretary determines under subsection (c) that the denial of national treatment to United States securities organizations by a foreign country has a significant adverse effect on such organizations, the Secretary—

(A) may, after initiating negotiations in accordance with subsection (f), and after consultation in accordance with subsection (h), publish that determination in the Federal Register; and

(B) shall, not less frequently than annually, in consultation with any department or agency that the Secretary deems appropriate, review each such determination to determine whether it should be rescinded.

(2) EXCEPTION FOR COUNTRIES THAT ARE PARTIES TO CERTAIN AGREEMENTS GOVERNING FINANCIAL SERVICES.—Paragraph (1) shall not apply to a foreign country to the extent that any authority under that paragraph would permit action to be taken that would be inconsistent with a bilateral or multilateral agreement (including any dispute resolution procedures contained in such agreement) that governs financial services that—

(A) the President entered into with that country; and

(B) the Senate and House of Representatives approved;

before the date of enactment of this section.

(e) SANCTIONS.—

(1) ACTION BY SECRETARY OF TREASURY.—

(A) IN GENERAL.—The Secretary may, after consultation in accordance with subsection (h), recommend to the Commission that the Commission deny or suspend consideration of a request for authorization filed after the date of publication of a determination under subsection (d)(1) by a person of a foreign country listed in such publication if the Secretary determines that—

(i) such action would assist the United States in negotiations to eliminate discrimination against United States securities organizations;

(ii) negotiations undertaken pursuant to subsection (f) are not likely to result in an agreement that eliminates the denial of national treatment; or

(iii) the country has not adequately adhered to an agreement reached as a result of negotiations undertaken pursuant to subsection (f).

(B) EXERCISE OF AUTHORITY.—The authority of subparagraph (A) shall be exercised according to the specific direction (if any) of the President.

(C) COMMISSION ACTION.—The Commission shall deny or suspend consideration of a request for authorization in accordance with the recommendation of the Secretary made under subparagraph (A), unless such recommendation would likely result in a serious adverse impact on—

(i) the maintenance of fair and orderly securities markets; or

(ii) the protection of investors.

(D) AUTHORITY UPON DENIAL OF AUTHORIZATION.—

(i) IN GENERAL.—In connection with the denial of a request for authorization under subparagraph (A), the Commission may order—

(I) disposition of any controlling interest referred to in subsection (i)(9)(B)(i);

(II) closure of any office referred to in subsection (i)(9)(B)(ii); or

(III) termination of any advisory relationship referred to in subparagraphs (C) and (D) of subsection (i)(9).

(ii) PENALTY FOR NONCOMPLIANCE.—The Commission may revoke the underlying registration under Federal securities laws of any person who fails to comply with an order issued under clause (i).

(2) NOTICE REQUIRED TO FILE REQUESTS FOR AUTHORIZATION.—

(A) IN GENERAL.—If a determination is published under subsection (d)(1) with respect to a foreign country, no person of that foreign country may file a request for authorization unless such person files notice of such request simultaneously with the Commission and the Secretary, not less than 90 days in advance of the action that is the subject of the request, in such form and containing such information as the Commission may prescribe by rule.

(B) NOTIFYING SECRETARY.—The Commission shall promptly notify the Secretary of any notice received under subparagraph (A).

(C) EXTENDING 90-DAY PERIOD.—The Commission may, by order, extend for an additional 180 days the period during which the Commission may consider a notice received under subparagraph (A).

(3) STANDARDS FOR EXERCISE OF DISCRETION.—In exercising any discretion under this subsection, the Secretary shall consider, with respect to a securities organization that is controlled, directly or indirectly, by a person of a foreign country—

(A) the extent to which the foreign country is progressing toward according national treatment to United States securities organizations; and

(B) whether the foreign country permits United States securities organizations to expand their activities in that country, even if that country determined that the United States did not accord national treatment to securities organizations of that country.

(f) NEGOTIATIONS.—

(1) IN GENERAL.—The Secretary—

(A) shall initiate negotiations with any foreign country with respect to which a determination under subsection (c)(1) is in effect; and

(B) may initiate negotiations with any foreign country which denies national treatment to United States securities organizations to ensure that the foreign country accords national treatment to such organizations.

(2) EXCEPTIONS.—Paragraph (1) does not require the Secretary to initiate negotiations with a foreign country if the Secretary—

(A) determines that the negotiations—

(i) would be so unlikely to result in progress toward according national treatment to United States securities organizations as to be a waste of effort; or

(ii) would impair the economic interests of the United States; and

(B) gives written notice of that determination to the chairperson and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee of Energy and Commerce of the House of Representatives.

(g) REPORT.—

(1) CONTENTS OF REPORT.—Not later than December 1, 1994, and biennially thereafter, the Secretary shall submit to the Congress a report that—

(A) specifies the foreign countries identified under subsection (b);

(B) if a determination is published under subsection (d)(1) with respect to the foreign country, provides the reasons therefor;

(C) if the Secretary has not made, or has rescinded, a determination under subsection (d)(1) with respect to the foreign country, provides the reasons therefor;

(D) describes the results of any negotiations conducted under subsection (f)(1) with the foreign country; and

(E) discusses the effectiveness of this section in achieving the purpose of this section.

(2) SUBMISSION OF REPORT.—The report required by paragraph (1) may be submitted as part of a report or update submitted under section 3602 of the Omnibus Trade and Competitiveness Act of 1988.

(h) CONSULTATION.—Consultation in accordance with this subsection means consultation with the Secretary of State, the Secretary of Commerce, the United States Trade Representative, and the Commission.

(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) BROKER.—The term "broker" has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934.

(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(3) CONTROL.—The terms "directly or indirectly controlled by" and "controlled, directly or indirectly" shall have the meanings given to such terms in rules or regulations issued by the Secretary of the Treasury, not later than 6 months after the date of enactment of this Act, after consultation with the Commission.

(4) DEALER.—The term "dealer" has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934.

(5) INVESTMENT ADVISER.—The term "investment adviser" has the same meaning as in section 202(a)(11) of the Investment Advisers Act of 1940.

(6) INVESTMENT COMPANY.—The term "investment company" has the same meaning as in section 3 of the Investment Company Act of 1940.

(7) NATIONAL TREATMENT.—A foreign country accords "national treatment" to United States securities organizations if it offers them the same competitive opportunities (including effective market access) as are available to its domestic securities organizations in like circumstances.

(8) PERSON OF A FOREIGN COUNTRY.—The term "person of a foreign country" means—

(A) a person organized under the laws of the foreign country;

(B) a person that has its principal place of business in the foreign country;

(C) an individual who is—

(i) a citizen of the foreign country; or

(ii) domiciled in the foreign country;

(D) a person that is directly or indirectly controlled by one or more persons described in subparagraph (A), (B), or (C); and

(E) an investment company, an investment adviser of which is a person described in any of subparagraphs (A) through (D).

(9) REQUEST FOR AUTHORIZATION.—The term "request for authorization" means—

(A) an application to register under section 15(b), 15B, or 15C of the Securities Exchange Act of 1934, or section 203(c) of the Investment Advisers Act of 1940, including an application to succeed to the business of a registered entity;

(B) an amendment to a registration statement referred to in subparagraph (A) that reflects—

(i) the acquisition of control of the registered entity; or

(ii) the addition of a United States office by the registered entity;

(C) a registration statement filed by an investment company under section 8(b) of the Investment Company Act of 1940, if a person of a foreign country will serve as an investment adviser to the investment company; and

(D) an amendment to an investment company registration statement filed under section 8(b) of the Investment Company Act of 1940 that reflects the retention of a person of a foreign country as an investment adviser.

(10) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(11) SECURITIES ORGANIZATION.—The term "securities organization" means a broker, a dealer, an investment company, or an investment adviser.

SEC. 504. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INSURERS AND REINSURERS.

(a) PURPOSE.—The purpose of this section is to encourage foreign countries to accord national treatment to United States insurers and reinsurers that operate or seek to operate in those countries.

(b) IDENTIFYING COUNTRIES THAT DENY NATIONAL TREATMENT TO UNITED STATES INSURERS OR REINSURERS.—The President or the President's designee shall identify whether and to what extent foreign countries deny national treatment to United States insurers or reinsurers—

(1) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (or update thereof); or

(2) based on more recent information that the President deems appropriate.

(c) DETERMINING WHETHER DENIAL OF NATIONAL TREATMENT HAS SIGNIFICANT ADVERSE EFFECT.—

(1) IN GENERAL.—The President shall determine whether the denial of national treatment to United States insurers or reinsurers by a foreign country identified under subsection (b) has a significant adverse effect on such organizations.

(2) FACTORS TO BE CONSIDERED.—In determining whether and to what extent a foreign country denies national treatment to United States insurers or reinsurers, and in determining the effect of any such denial on such insurers or reinsurers, the President shall consider appropriate factors, including—

(A) the size of the foreign country's markets for the financial services involved, and the extent to which United States insurers or reinsurers operate or seek to operate in those markets;

(B) the extent to which United States insurers or reinsurers may participate in developing regulations, guidelines, or other policies regarding new products, services, and markets in the foreign country;

(C) the extent to which the foreign country issues written regulations, guidelines, or other policies applicable to United States insurers or reinsurers operating or seeking to operate in the foreign country that are—

(i) prescribed after adequate notice and opportunity for comment;

(ii) readily available to the public; and

(iii) prescribed in accordance with objective standards that effectively prevent arbitrary and capricious determinations;

(D) the effects of the regulatory policies of the foreign country on—

(i) the licensing policies of the insurance regulator of that country;

(ii) capital requirements applicable in that country;

(iii) restrictions on acquisitions or joint ventures and operations thereof by insurers or reinsurers in that country; and

(iv) restrictions on the operation and establishment of branches in that country.

(d) PUBLICATION OF DETERMINATION.—

(1) IN GENERAL.—If the President determines under subsection (c) that the denial of national treatment to United States insurers or reinsurers by a foreign country has a significant adverse effect on such organizations, the President—

(A) may, after initiating negotiations in accordance with subsection (f) publish that determination in the Federal Register;

(B) shall, not less frequently than annually, in consultation with any department or agency that the President deems appropriate, review each such determination to determine whether it should be rescinded; and

(C) shall inform State insurance commissioners of the publication of that determination.

(2) EXCEPTION FOR COUNTRIES THAT ARE PARTIES TO CERTAIN AGREEMENTS GOVERNING FINANCIAL SERVICES.—Paragraph (1) shall not apply to a foreign country to the extent that any authority under that paragraph would permit action to be taken that would be inconsist-

ent with a bilateral or multilateral agreement including any dispute resolution procedures contained in such agreement that governs financial services, including insurance, that—

(A) the President entered into with that country; and

(B) the Senate and the House of Representatives approved;

before the date of enactment of this section.

(e) SANCTIONS.—

(1) ACTIONS BY THE PRESIDENT.—

(A) IN GENERAL.—The President may recommend to the State insurance commissioners that they deny a foreign insurer's or reinsurer's request for authorization which is filed after the date of publication of a determination under subsection (d)(1) by a person of a foreign country listed in such publication if the President determines that—

(i) such action would assist the United States in negotiations to eliminate discrimination against United States insurers or reinsurers;

(ii) negotiations undertaken pursuant to subsection (f) are not likely to result in an agreement that eliminates the denial of national treatment; or

(iii) the country has not adequately adhered to an agreement reached as a result of negotiations undertaken pursuant to subsection (f).

(B) EXERCISE OF AUTHORITY.—If the President delegates his authority under section 504(b), the designee's authority under subparagraph (A) shall be exercised according to the specific direction (if any) of the President.

(C) COMPLIANCE EXCEPTIONS.—If the State insurance commissioners do not act within 90 days on the President's recommendations in subsection (A), or if the President determines that the procedure outlined in subsection (A) is either inappropriate or impractical to achieve the purpose of this section, the President may take such action as he or she considers necessary and appropriate to encourage foreign countries to accord national treatment to United States insurers and reinsurers that operate or seek to operate in those countries.

(2) STANDARDS FOR EXERCISE OF DISCRETION.—In exercising any discretion under subsection (e), the President shall consider, with respect to an insurer or reinsurer, branch, or other affiliated entity that is a person of a foreign country and is operating in the United States—

(A) the extent to which the foreign country is progressing toward according national treatment to United States insurers or reinsurers; and

(B) whether the foreign country permits United States insurers or reinsurers to expand their activities in that country, even if that country determined that the United States did not accord national treatment to the insurers or reinsurers of that country.

(f) NEGOTIATIONS.—

(1) IN GENERAL.—The President—

(A) shall initiate negotiations with any foreign country with respect to which a determination made under subsection (c)(1) is in effect; and

(B) may initiate negotiations with any foreign country which denies national treatment to United States insurers or reinsurers to ensure that the foreign country accords national treatment to such insurers or reinsurers.

(2) EXCEPTIONS.—Paragraph (1) does not require the President to initiate negotiations with a foreign country if the President—

(A) determines that the negotiations—

(i) would be so unlikely to result in progress toward according national treatment to United States insurers or reinsurers as to be a waste of effort; or

(ii) would impair the economic interests of the United States; and

(B) gives written notice of that determination to the chairperson and the ranking minority member of the appropriate Senate and House committees.

(g) REPORT.—

(1) CONTENTS OF REPORT.—Not later than December 1, 1994, and biennially thereafter, the President shall submit to the Congress a report that—

(A) specifies the foreign countries identified under subsection (b);

(B) if a determination is published under subsection (d)(1) with respect to the foreign country, provides the reasons therefor;

(C) if the President has not made or has rescinded such a determination with respect to the foreign country, provides the reasons therefor;

(D) describes the results of any negotiations conducted under subsection (g)(1) with the foreign country; and

(E) discusses the effectiveness of this section in achieving the purpose of this section.

(2) SUBMISSION OF REPORT.—The report required by paragraph (1) may be submitted as part of a report or update submitted under section 3602 of the Omnibus Trade and Competitiveness Act of 1988.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) INSURER.—The term "insurer" means a party to a contract of insurance who assumes the risk and undertakes to indemnify the insured, or pay a certain sum on the happening of a specified contingency.

(2) NATIONAL TREATMENT.—A foreign country accords "national treatment" to United States insurers and reinsurers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic insurers or reinsurers.

(3) PERSON OF A FOREIGN COUNTRY.—The term "person of a foreign country" means—

(A) a person organized under the laws of the foreign country;

(B) a person that has its principal place of business in the foreign country;

(C) an individual who is—

(i) a citizen of the foreign country, or

(ii) domiciled in the foreign country; and

(D) a person that is directly or indirectly controlled by a person or persons described in subparagraph (A) or (B), or by an individual or individuals described in subparagraph (C).

(4) PRESIDENT.—The term "President" means the President of the United States or the President's designee.

(5) REINSURER.—The term "reinsurer" means an insurer which contracts to indemnify a ceding insurer for all or part of a risk originally undertaken by the ceding insurer.

(6) REQUEST FOR AUTHORIZATION.—The term "request for authorization" means—

(A) an application, registration, notice, or other request to commence engaging in the business of insurance in a State; or

(B) an application, registration, notice, or other request for renewal of authorization to engage in the business of insurance in a State.

SEC. 505. FINANCIAL INTERDEPENDENCE STUDY.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5351 et seq.) is amended by adding at the end the following new section:

"SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.

"(a) INVESTIGATION REQUIRED.—The Secretary, in consultation and coordination with the Securities and Exchange Commission, the Federal banking agencies, and any other appropriate Federal department or agency designated by the Secretary, shall conduct an investigation to determine—

"(1) the extent of the interdependence of the financial services sectors of the United States and foreign countries—

"(A) whose financial services institutions provide financial services in the United States; or

"(B) whose persons have substantial ownership interests in United States financial services institutions; and

"(2) the economic, strategic, and other consequences of that interdependence for the United States.

"(b) REPORT.—

"(1) REPORT REQUIRED.—Not later than 3 years after the date of enactment of this section, the Secretary shall submit a report on the results of the investigation under subsection (a) to the President, the Congress, the Securities and Exchange Commission, the Federal banking agencies, and any other appropriate Federal agency or department, as designated by the Secretary.

"(2) CONTENTS OF REPORT.—The report required under paragraph (1) shall—

"(A) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

"(B) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

"(C) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial service activities conducted by United States financial services institutions;

"(D) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to the domestic financial services institutions of those countries;

"(E) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, the provision of credit or other financial services, or otherwise;

"(F) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

"(G) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

"(H) describe the extent to which United States companies rely on financing by or through foreign financial services institutions and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

"(I) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

"(J) contain other appropriate information relating to the results of the investigation required by subsection (a).

"(c) DEFINITIONS.—For purposes of this section the following definitions shall apply:

"(1) DEPOSITORY INSTITUTION AND DEPOSITORY INSTITUTION HOLDING COMPANY.—The terms 'depository institution' and 'depository institution holding company' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(2) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(3) FINANCIAL SERVICES INSTITUTION.—The term 'financial services institution' means—

"(A) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

"(B) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

"(C) any depository institution or depository institution holding company; and

"(D) any other entity providing financial services.

"(4) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.".

SEC. 506. FEDERAL RESERVE REPORT ON THE FOREIGN BANK SUPERVISION ENHANCEMENT ACT OF 1991.

The Federal Reserve shall submit to the House and Senate Banking Committees within 60 days of enactment of this legislation a report on the Foreign Bank Supervision Enhancement Act of 1991 including:

(a) the number of applicants received and from what countries;

(b) the number of applications approved and from what countries;

(c) the amount of time taken on each application between receipt and approval or rejection of the application;

(d) other agencies involved in the approval process, how much time is taken by those agencies, and any problems encountered with these agencies;

(e) coordination of processing applications and length of time for processing between the regional bank's and the Federal Reserve Board's staffs;

(f) efforts to define consolidated home country supervision on an international basis, and

(g) suggestions for streamlining the process.

SEC. 507. CONFORMING AMENDMENTS.

(a) REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in the first sentence, by inserting "with updates on significant developments every 2 years following submission of the 1994 report," before "the Secretary of the Treasury"; and

(2) by adding at the end the following: "For purposes of this section, a foreign country denies national treatment to United States entities unless the foreign country offers such entities the same competitive opportunities (including effective market access) as are available to the domestic entities of the foreign country.".

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting "effective" before "access".

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342(b)(1)) is amended—

(1) by striking "does not accord to" and inserting "does not offer"; and

(2) by striking "as such country accords to" and inserting "(including effective market access) as are available to".

(d) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 15.—Section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)) is amended by adding at the end the following: "The Commission may suspend consideration, deny registration, issue an order, or revoke registration, as provided in section 403(e)(1) of the Fair Trade in Financial Services Act of 1994.".

(2) SECTION 15B.—Section 15B(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)(2)) is amended by adding at the end the following: "The Commission may suspend consideration, deny registration, issue an order, or revoke registration, as provided in section 403(e)(1) of the Fair Trade in Financial Services Act of 1994.".

(3) SECTION 15C.—Section 15C(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(a)(2)) is amended by adding at the end the following: "The Commission may suspend consideration, deny registration, issue an order, or revoke registration, as provided in section 403(e)(1) of the Fair Trade in Financial Services Act of 1994.".

(e) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) is amended by adding at the end the following new subsection:

"(g) The Commission may suspend consideration, deny registration, issue an order, or revoke registration, as provided in section 403(e)(1) of the Fair Trade in Financial Services Act of 1994.".

(f) CONFORMING AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(c)(2) of the Investment Advisers Act of 1940 (15 U.S.C. (c)(2)) is amended by adding at the end the following: "The Commission may suspend consideration, deny registration, issue an order, or revoke registration, as provided in section 403(e)(1) of the Fair Trade in Financial Services Act of 1994.".

TITLE VI—NATIONAL FLOOD INSURANCE REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the "National Flood Insurance Reform Act of 1994".

SEC. 602. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the 4 principal objectives of the National Flood Insurance Program are to limit increasing flood control and disaster relief expenditures, to provide a prefunded mechanism to more fully indemnify victims of flood-related disasters, to limit unwise development in floodplains, and to provide affordable Federal flood insurance for structures located in areas of special flood hazards;

(2) since 1968, the National Flood Insurance Program has reduced the need for taxpayer funded disaster assistance and has been a factor in motivating local government mitigation efforts.

(3) repetitively damaged properties represent a substantial problem for the National Flood Insurance Program, with over 40 percent of all flood insurance claims made on properties that have been damaged more than once;

(4) the problem of erosion warrants greater analysis;

(5) reforms in the National Flood Insurance Program are essential to increase participation in the Program, make the Program more actuarially sound, decrease the risk of losses to the United States Treasury, and address the problem of properties repetitively damaged by floods;

(6) a Federal flood insurance program that combines predisaster mitigation efforts together with an insurance and compliance program will reduce the physical and economic effects of flood-related damage on the Federal Government, State and local governments, and individuals;

(7) requiring regulated lending institutions, government agencies, and government-sponsored enterprises to make sure that flood insurance coverage is purchased on all properties in areas of special flood hazards in participating communities will increase compliance with the program, and increase the pool of funds, thereby decreasing the impact on the National Flood Insurance Fund of individual flood events;

(8) incentives in the form of reduced premium rates for flood insurance under the National Flood Insurance Program should be provided in communities that have adopted and enforced exemplary or particularly effective measures for comprehensive floodplain management; and

(9) these community-based, individual mitigation, and loss prevention methods and incentives should be incorporated into the National Flood Insurance Program.

SEC. 603. DEFINITION.

As used in this title, the term "Director" means the Director of the Federal Emergency Management Agency.

Subtitle A—Definitions

SEC. 611. FLOOD DISASTER PROTECTION ACT OF 1973.

(a) IN GENERAL.—Section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)) is amended—

(1) by striking paragraph (5) and inserting the following new paragraph:

"(5) 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;";

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

"(7) 'regulated lending institution' means a bank, savings association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

"(8) 'Federal agency lender' means the Federal Housing Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home; and

"(9) 'servicer' means a person who receives any scheduled periodic payments from a borrower pursuant to the terms of any loan secured by a lien on real property, and who makes the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required.".

(b) CONFORMING AMENDMENTS.—

(1) REQUIREMENTS TO PURCHASE FLOOD INSURANCE.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended by striking "(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation direct such institutions" and inserting the following:

"(b) FLOOD INSURANCE PURCHASE REQUIREMENTS.—Each Federal entity for lending regulation shall by regulation direct regulated lending institutions".

(2) EFFECT OF NONPARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(b)) is amended by striking "Federal instrumentality described in such section shall by regulation require the institutions" and inserting "Federal entity for lending regulation (with respect to regulated lending institutions)".

SEC. 612. NATIONAL FLOOD INSURANCE ACT OF 1968.

(a) IN GENERAL.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(7) the term 'Federal entity for lending regulation' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration Board, and with respect to a particular regulated lending institution, means the entity primarily responsible for the supervision of the institution;

"(8) the term 'regulated lending institution' means a bank, savings association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

"(9) the term 'Federal agency lender' means the Federal Housing Administration, the Farmers Home Administration, the Small Business Administration, and the Veterans' Administration, when such agency makes loans secured by improved real estate or a manufactured home;

"(10) the term 'natural and beneficial floodplain functions' means—

"(A) the functions associated with the natural or relatively undisturbed floodplain that moderate flooding, retain flood waters, reduce erosion and sedimentation, mitigate the effects of waves and storm surge from storms; and

"(B) ancillary beneficial functions, including maintenance of water quality, and recharge of ground water

that reduce flood related damage;

"(11) the term 'erosion control measures' means a community's efforts to control erosion through nonstructural and structural projects;

"(12) the term 'repetitive loss structure' means an insured property that has incurred flood-related damage on 2 occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each flood event;

"(13) the term 'cost of compliance with land use and control measures' means—

"(A) the cost of elevating or floodproofing a structure so that the structure is in compliance with the minimum performance standards adopted by the State or community pursuant to section 1315 of the National Flood Insurance Act of 1968, or

"(B) the cost of relocation or demolition of the structure if the Director demonstrates that the structure will collapse or subside as a result of erosion within 30 years based on State erosion data;

"(14) the term 'servicer' means any person who receives any scheduled periodic payments from a borrower pursuant to the terms of any loan secured by a lien on real property, and who makes the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required.".

(b) CONFORMING AMENDMENT.—Section 1322(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4029(d)) is amended by striking "federally supervised, approved, regulated or insured financial institution" and inserting "regulated lending institution".

Subtitle B—Compliance and Increased Participation

SEC. 621. EXPANDED FLOOD INSURANCE PURCHASE REQUIREMENTS.

(a) IN GENERAL.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)), as amended by section 611(b)(1), is amended—

(1) by striking "Each Federal entity" and inserting the following:

"(1) IN GENERAL.—Each Federal entity";

(2) by inserting before "shall by regulation" the following: "(after consultation and coordination with the Federal Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974)"; and

(3) by adding at the end the following new paragraphs:

"(2) PROCEDURES IMPLEMENTED BY FNMA, FHLMC, AND FAMC.—The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation shall implement procedures reasonably designed to assure that each loan that is—

"(A) secured by improved real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968; and

"(B) purchased by any such entity;

is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

"(3) PROCEDURES IMPLEMENTED BY FEDERAL AGENCY LENDERS.—Each Federal agency lender shall implement procedures reasonably designed to assure that all property—

"(A) that secures loans that the Federal agency lender makes, increases, extends, or renews; and

"(B) that is improved by real estate or a manufactured home located in an area that has been identified at the time of the origination of the loan by the Director as an area of special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968;

is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

"(4) DEFINITION.—For purposes of this section property improved by real estate means insurable improvements on that property.".

(b) EFFECTIVE DATE.—The provisions of this section shall apply to all transactions occurring after the expiration of the 1-year period beginning on the date of enactment of this title.

SEC. 622. ESCROW OF FLOOD INSURANCE PAYMENTS.

(a) IN GENERAL.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by adding at the end the following new subsection:

"(d) ESCROW OF FLOOD INSURANCE PAYMENTS.—

"(1) BY REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential real estate or manufactured homes, all charges for flood insurance under this title for the property shall be paid by the borrower to the institution for the duration of the period during which the regulated lending institution maintains an escrow account. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the institution shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees, or other charges owed.

"(2) BY FEDERAL AGENCY LENDERS.—If a Federal agency lender requires the escrowing of taxes, insurance premiums, fees, or any other charges, then any charges for flood insurance under this title for the residential real estate or the manufactured home shall be paid by the borrower to the Federal agency lender for the duration of the period during which the Federal agency lender maintains an escrow account. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums, fees, or other charges are due, the Federal agency lender shall pay from the escrow account to the provider of the insurance the amount of insurance premiums, fees or other charges owed.

"(3) APPLICABILITY OF REAL ESTATE SETTLEMENT PROCEDURES ACT.—Escrow accounts used to collect flood insurance premiums, fees, or other charges under this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.".

(b) APPLICABILITY.—Section 102(d) of the Flood Disaster Protection Act of 1973, as added by subsection (a), shall apply with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of this title.

SEC. 623. NOTICE REQUIREMENTS.

Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a) is amended to read as follows:

"SEC. 1364. NOTICE REQUIREMENTS.

"(a) LENDING INSTITUTIONS.—Each Federal entity for lending regulation, after consultation and coordination with the Federal Financial Institutions Examination Council, shall by regulation require that before a regulated lending institution makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the institution shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(b) FEDERAL AGENCY LENDERS.—Before a Federal agency lender makes, increases, extends, or renews a loan secured by improved real estate or a manufactured home located in an area that has been identified by the Director as an area of special flood hazards, the Federal agency lender shall notify the borrower of the special flood hazards and of the need to purchase and maintain flood insurance.

"(c) PARTICIPATING COMMUNITIES.—The Director shall by regulation require each participating community, upon receiving the semiannual list prepared by the Director of all revisions to and updates of flood insurance rate maps made during the preceding 6 months, to determine whether any properties in their community have been affected, and to provide annual notice by mail, notice by publication, notice on tax assessments, or notice by other reasonable method, to regulated lending institutions that are known to lend in the community, and to the owners of all properties newly determined to be, or no longer to be, in an area of special flood hazards, of the flood insurance purchase requirements under section 102(b).

"(d) CONTENTS OF NOTICE.—Notification required by this section shall include a warning, in a form to be established by the Director, stating that the real estate or manufactured home securing the loan is located in an area of special flood hazards, a description of the flood insurance purchase requirements under section 102(b), a statement that flood insurance coverage may be purchased under the National

Flood Insurance Program and may also be available from private insurers, and any other information that the Director considers necessary to carry out the purposes of the National Flood Insurance Program.''.

SEC. 624. PLACEMENT OF FLOOD INSURANCE BY REGULATED LENDING INSTITUTION, FEDERAL AGENCY LENDER, OR SERVICER.

(a) REQUIRED ACTIONS BY LENDER.—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), as amended by section 622(a), is amended by adding at the end the following new subsection:

''(e) REQUIRED ACTIONS BY LENDER.—

''(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.—If, at the time of origination or at any other time during the term of a loan secured by improved real estate or by a manufactured home located in an area that has been identified by the Director as an area of special flood hazards and in which flood insurance is available under this title, a regulated lending institution, Federal agency lender, or servicer determines that the building or manufactured home and any personal property securing the loan held or serviced by the regulated lending institution, Federal agency lender, or servicer is not covered by flood insurance, in an amount not less than the amount required by subsection (b)(1), the regulated lending institution, Federal agency lender, or servicer shall notify the borrower, in a form to be established by the Director, that the borrower should obtain, at the borrower's expense, an amount of flood insurance that is not less than the amount required by subsection (b)(1), for the term of the loan. If, not later than 45 days after receiving such notification, the borrower fails to purchase such flood insurance, the regulated lending institution, Federal agency lender, or servicer shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the regulated lending institution, Federal agency lender, or servicer in purchasing the insurance.

''(2) REVIEW.—

''(A) BY THE DIRECTOR.—A borrower may request, based upon the submission of supporting technical data, that the Director review a determination that the improved real estate or manufactured home securing the loan is located in an area of special flood hazards. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide the borrower with a letter stating whether or not the property is in an area of special flood hazards. The determination of the Director shall be final. If the Director fails to respond to a request within 45 days, the property shall be deemed not to be located in an area having special flood hazards.

''(B) INSURANCE NOT REQUIRED.—If a person is provided by the borrower with a letter issued by the Director pursuant to subparagraph (A) during the preceding 1-year period, stating that the property is not in an area of special flood hazards, such person shall have no obligation under this title to require the purchase of flood insurance on the property.''.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), section 102(e) of the Flood Disaster Protection Act of 1973, as added by subsection (a), shall apply to all loans outstanding on or after the date of enactment of this title.

(2) LOANS REGULATED BY THE FARM CREDIT ADMINISTRATION.—With respect to loans held by institutions regulated by the Farm Credit Administration, section 102(e) of the Flood Disaster Protection Act of 1973, as added by subsection (a), shall apply only to loans originating on or after the date of enactment of this title.

SEC. 625. STANDARD FLOOD HAZARD DETERMINATION FORMS.

(a) IN GENERAL.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by adding at the end the following new section:

''SEC. 1365. STANDARD FLOOD HAZARD DETERMINATION FORMS.

''(a) DEVELOPMENT.—The Director, in consultation with the Federal entities for lending regulation, and after notice and comment, shall develop a standard flood hazard determination form (hereafter in this section referred to as the 'determination form') for use in connection with loans secured by improved real estate or a manufactured home located in an area of special flood hazards and in which flood insurance is available under this title. The determination form may be maintained in a printed, computerized, or electronic manner.

''(b) DESIGN AND CONTENTS.—The determination form shall state whether the property is in an area of special flood hazards, the risk premium rate classification established for the special flood hazard area in which the property is located, the complete map and panel numbers for the property, and the date of the map used for the determination. If the complete map and panel numbers for the property are not available because the property is not located in a community that is participating in the National Flood Insurance Program or because no map exists for the relevant area, the determination form shall so state.

''(c) REQUIRED USE.—Each Federal entity for lending regulation shall by regulation require the use of the determination form by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the determination form. The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation shall require use of the determination form by any person from whom they purchase loans.

''(d) GUARANTEES REGARDING INFORMATION.—In recording information on a determination form, a person may rely on information provided by a third party to the extent that the third party guarantees the accuracy of the information.

''(e) RELIANCE ON PREVIOUS DETERMINATION.—A person or institution increasing, extending, renewing, or purchasing a loan may rely on a previous determination as to whether property is in a special flood hazard area, if the previous determination was made not more than 5 years before the date of the transaction, and the basis for the previous determination has been set forth on a determination form.''.

(b) APPLICABILITY.—Section 1365 of the National Flood Insurance Act of 1968, as added by subsection (a), shall apply to all loans originated on or after the expiration of the 6-month period beginning on the date the standard flood hazard determination form is finalized by the Director.

SEC. 626. EXAMINATIONS REGARDING COMPLIANCE BY REGULATED LENDING INSTITUTIONS.

(a) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

''(h) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

''(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the National Flood Insurance Program.

''(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1994, and biannually thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to Congress on compliance by insured depository institutions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.''.

(b) AMENDMENT TO THE FEDERAL CREDIT UNION ACT.—Section 204 of the Federal Credit Union Act (12 U.S.C. 1784) is amended by adding at the end the following new subsection:

''(e) FLOOD HAZARD INSURANCE COMPLIANCE BY INSURED CREDIT UNIONS REQUIRED.—

''(1) EXAMINATION.—The Board shall, during each examination conducted under this section, determine whether the insured credit union is complying with the requirements of the National Flood Insurance Program.

''(2) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1994, and biannually thereafter for the next 4 years, the Board shall submit a report to Congress on compliance by insured credit unions with the requirements of the National Flood Insurance Program. The report shall include a description of the methods used to determine compliance, the number of insured credit unions examined during the reporting year, a listing and total number of insured credit unions found to be in noncompliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.''.

SEC. 627. PENALTIES AND CORRECTIVE ACTIONS FOR FAILURE TO REQUIRE FLOOD INSURANCE, ESCROW, OR NOTIFY.

Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), as amended by sections 622 and 624, is amended by adding at the end the following new subsections:

''(f) CIVIL PENALTIES.—

''(1) IN GENERAL.—A regulated lending institution that is found to have a pattern or practice of violating this section may be assessed a civil penalty by the appropriate Federal entity for lending regulation of not more than $350 for each such violation. A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

''(2) TOTAL AMOUNT.—The total amount of penalties assessed under this subsection against a single regulated lending institution for any calendar year may not exceed $100,000.

''(3) SALES OR TRANSFERS.—The subsequent sale or other transfer of a loan by a regulated lending institution that has committed a violation of this section shall not affect the liability of the transferring institution with respect to any penalty under this subsection. An institution shall not be liable for a violation relating to a loan committed by another institution that previously held the loan.

''(4) 3-YEAR LIMIT.—No penalty may be imposed under this subsection after the expiration of the 3-year period beginning on the date of the occurrence of the violation.

''(g) ADDITIONAL ACTIONS.—If a Federal entity for lending regulation determines—

''(1) that a regulated lending institution has demonstrated a pattern and practice of noncompliance in violation of the regulations issued

pursuant to subsection (b) or subsection (d) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968; and

"(2) that the regulated lending institution has not demonstrated measurable improvement in compliance despite the issuance of penalties under subsection (f);

the agency may require the regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution is in satisfactory compliance with the requirements of the National Flood Insurance Program.".

SEC. 628. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

"(g) FLOOD INSURANCE.—The Council shall consult with and assist the Federal entities for lending regulation, as such term is defined in section 1370(a)(7) of the National Flood Insurance Act of 1968, in developing and coordinating uniform standards and requirements for use by regulated lending institutions under the National Flood Insurance Program.".

SEC. 629. CONFORMING AMENDMENT.

The section heading for section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended to read as follows:

"FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS".

Subtitle C—Ratings and Incentives for Community Floodplain Management Programs

SEC. 631. COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.

(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 1315. STATE AND LOCAL LAND USE CONTROLS.";

(2) by striking "After December" and inserting the following:

"(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—After December"; and

(3) by adding at the end the following new subsection:

"(b) COMMUNITY RATING SYSTEM AND INCENTIVES FOR COMMUNITY FLOODPLAIN MANAGEMENT.—

"(1) AUTHORITY AND GOALS.—The Director shall carry out a community rating system program to evaluate the measures adopted by communities voluntarily participating in the community rating system, to provide incentives for measures to reduce the risk of flood or erosion damage that exceed the criteria set forth in section 1361, to encourage adoption of more effective measures to protect natural and beneficial floodplain functions, floodplain and erosion management, and to promote the reduction of Federal flood insurance losses.

"(2) INCENTIVES.—The program shall provide incentives in the form of credits on premium rates for flood insurance coverage in communities that the Director determines have adopted and enforced measures to reduce the risk of flood and erosion damage that exceed the criteria set forth in section 1361. In providing incentives under this paragraph, the Director may provide for credits to flood insurance premium rates in communities that the Director determines have—

"(A) implemented measures to protect natural and beneficial floodplain functions; and

"(B) adopted erosion control measures.

"(3) CREDITS.—The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under this program. If a community has received mitigation assistance under section 1366, the credits shall be phased-in as determined by the Director.".

(b) REPORTS.—Two years after the date of enactment of this title and biannually thereafter, the Director shall submit a report to the Congress regarding the program under section 1315(a) of the National Flood Insurance Act of 1968. Each report shall include an analysis of the cost-effectiveness and other accomplishments and shortcomings of the program and any recommendations of the Director for legislation regarding the program.

SEC. 632. FUNDING.

Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(3) by adding after paragraph (5) the following new paragraph:

"(6) for carrying out the program under section 1315(b);".

SEC. 633. REASONABLE FEES.

A lender may charge a borrower a reasonable fee for making a flood insurance determination.

Subtitle D—Mitigation of Flood and Erosion Risks

SEC. 641. MITIGATION ASSISTANCE IN FEDERAL INSURANCE ADMINISTRATION.

Section 1105(a) of the Housing and Urban Development Act of 1968 (42 U.S.C. 4129) is amended—

(1) by striking "(a) There is hereby" and inserting the following:

"(a) ESTABLISHMENT.—There is hereby"; and

(2) by striking subsection (b) and inserting the following:

"(b) COORDINATION OF MITIGATION ACTIVITIES.—The Director shall coordinate all mitigation activities, including the administration of the program for mitigation assistance under section 1367. These activities shall include the development and implementation of various mitigation activities and techniques, the provision of advice and assistance regarding mitigation to States, communities, and individuals, including planning assistance under section 1367(d), coordination with other Federal flood and erosion mitigation efforts, and coordination with State and local governments and public and private agencies and organizations for collection and dissemination of information regarding erosion.".

SEC. 642. AUTHORIZATION OF NATIONAL FLOOD AND EROSION MITIGATION FUNDS UNDER SECTION 1362.

Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), as amended by section 625, is amended by adding at the end the following new section:

"SEC. 1366. NATIONAL FLOOD AND EROSION MITIGATION PROGRAM.

"(a) EXPENDITURES.—For flood and erosion mitigation activities authorized under section 1367, the Director may expend from the National Flood Insurance Fund—

"(1) up to $10,000,000 in the fiscal year ending September 30, 1994;

"(2) up to $15,000,000 in the fiscal year ending September 30, 1995;

"(3) up to $20,000,000 in the fiscal year ending September 30, 1996;

"(4) up to $20,000,000 in each fiscal year thereafter; and

"(5) any amounts recaptured under section 1367(i).

"(b) REPORT.—Not later than 1 year after the date of enactment of the National Flood Insurance Reform Act of 1994 and biannually thereafter, the Director shall submit a report to the Congress describing the status of flood and erosion mitigation activities carried out with funds authorized under this section.".

SEC. 643. STATE AND COMMUNITY MITIGATION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.), as amended by sections 625 and 642, is amended by adding at the end the following new section:

"SEC. 1367. STATE AND COMMUNITY MITIGATION ASSISTANCE.

"(a) AUTHORITY.—The Director shall develop and implement a financial assistance program with amounts made available under section 1366 to States and communities for planning and activities designed to reduce the risk of flood and erosion damage to insured structures and to protect natural and beneficial floodplain functions.

"(b) MITIGATION PLAN REQUIREMENT.—To be eligible to receive financial mitigation assistance, a State or community shall develop, and have approved by the Director, a flood and erosion risk mitigation plan (hereafter in this section referred to as a 'mitigation plan'), that is consistent with the criteria established by the Director under section 1361. The mitigation plan shall include a comprehensive strategy for mitigation activities adopted by the State or community following a public hearing.

"(c) NOTIFICATION OF APPROVAL.—Not later than 120 days after the submission of a mitigation plan, the Director shall notify the State or community submitting the plan of the Director's approval or disapproval of the plan. If the Director does not approve a plan, the Director shall notify the State or community in writing of the reasons for such disapproval.

"(d) PLANNING ASSISTANCE.—

"(1) IN GENERAL.—The Director shall make planning assistance available to States and communities for developing mitigation plans.

"(2) FUNDING.—From any amounts made available for use under section 1366 of the National Flood Insurance Act of 1968 in any fiscal year, the Director may use not more than $1,500,000 to provide planning assistance grants to States or communities to develop mitigation plans under this subsection.

"(3) LIMITATIONS.—

"(A) TIMING.—A grant for planning assistance may be awarded to a State or community once every 5 years and each grant may cover a period of 1 to 3 years.

"(B) AMOUNT.—A grant for planning assistance may not exceed—

"(i) $150,000, to any State; or

"(ii) $50,000, to any community.

"(C) GEOGRAPHIC.—Not more than $300,000 may be awarded to any 1 State and all communities located in that State for planning assistance in each fiscal year.

"(e) ELIGIBLE MITIGATION ACTIVITIES.—The Director shall determine eligibility for assistance under this section for mitigation activities that shall be technically feasible and cost-effective. These activities may include—

"(1) elevation, relocation, demolition, or floodproofing of structures;

"(2) the construction, repair, or restoration of levees, seawalls, and other structures that reduce the risk of flood damage;

"(3) erosion control measures including beach nourishment;

"(4) acquisition by States and communities of property substantially damaged by flood for public use as the Director determines is consistent with sound land management and use in such area; and

"(5) the provision of technical assistance by States to communities and individuals to conduct eligible mitigation activities.

"(f) LIMITATIONS ON MITIGATION ASSISTANCE.—

"(1) AMOUNT.—The amount of mitigation assistance provided under subsection (e) may not exceed in any 5-year period—

"(A) $10,000,000, to any State; or

"(B) $3,300,000, to any community.

"(2) GEOGRAPHIC.—Not more than $20,000,000 may be awarded to any 1 State and all communities located in that State for mitigation assistance in any 5-year period.

"(g) MATCHING REQUIREMENT.—The Director may provide mitigation assistance to a State or community in an amount not to exceed 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from other funds to carry out mitigation planning under subsection (d) and eligible activities under subsection (e).

"(h) OVERSIGHT OF MITIGATION PLANS.—The Director shall conduct oversight of recipients of mitigation assistance to ensure that the mitigation assistance is used in compliance with approved plans.

"(i) RECAPTURE.—If the Director determines that a State or community that has received mitigation assistance has not carried out the mitigation activities as set forth in the mitigation plan, the Director shall recapture any unexpended amounts and deposit the amounts in the Fund.

"(j) DEFINITION OF COMMUNITY.—For purposes of this section, the term 'community' means a political subdivision that has zoning and building code jurisdiction over a particular area of special flood hazards, and that is participating in the National Flood Insurance Program.

"(k) PREFERENCES FOR MITIGATION GRANTS TO COMMUNITIES.—

"(1) COST-BENEFICIAL PLANS.—In providing mitigation grants to communities under this section, the Director shall give preference to communities with mitigation plans that are the most cost-beneficial to the Flood Insurance Fund.

"(2) ADDITIONAL CRITERIA.—Subject to paragraph (1), the Director will also give preference to communities that—

"(A) have the highest rates of participation by property owners in the Federal flood insurance program;

"(B) have qualified for credits on premium rates under section 1315(b); and

"(C) have experienced repetitive losses that have been most costly to the Fund.".

(b) REGULATIONS.—Not later than 6 months after date of enactment of this title, the Director shall issue regulations implementing section 1367 of the National Flood Insurance Act of 1968, as added by subsection (a).

SEC. 644. REPEAL OF PROGRAM FOR PURCHASE OF CERTAIN INSURED PROPERTIES.

(a) REPEAL.—Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) is repealed.

(b) TRANSITION.—Notwithstanding the repeal under subsection (a), the Director may continue to purchase property under subsections (a) and (b) of section 1362 of the National Flood Insurance Act of 1968, as such section existed immediately before the date of enactment of this title, for a period of 1 year beginning on the date of enactment of this title.

SEC. 645. TERMINATION OF EROSION THREATENED STRUCTURES PROGRAM.

(a) IN GENERAL.—Section 1306 of the National Flood Insurance Act of 1968 (42 U.S.C. 4013) is amended by striking subsection (c).

(b) TRANSITION.—The Director may pay amounts under flood insurance contracts for demolition or relocation of structures as provided in section 1306(c) of the National Flood Insurance Act of 1968 (as in effect immediately before the date of enactment of this title) only during the 1-year period beginning on the date of enactment of this title.

SEC. 646. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968.

Section 1302 of the National Flood Insurance Act of 1968 (42 U.S.C. 4001) is amended by striking subsection (g).

Subtitle E—Flood Insurance Task Force

SEC. 651. FLOOD INSURANCE INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—There is established an interagency task force to be known as the Flood Insurance Task Force (hereafter in this title referred to as the "Task Force").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall consist of 13 members, who shall be the designees of—

(A) the Director;

(B) the Federal Housing Commissioner;

(C) the Secretary of Veterans Affairs;

(D) the Administrator of the Farmers Home Administration;

(E) the Administrator of the Small Business Administration;

(F) each member of the Federal Financial Institutions Examination Council;

(G) the chairman of the Board of Directors of the Federal Home Loan Mortgage Corporation;

(H) the chairman of the Board of Directors of the Federal National Mortgage Association; and

(I) the chairman of the Federal Agricultural Mortgage Corporation.

(2) QUALIFICATIONS.—Members of the Task Force shall be designated for membership on the Task Force by reason of demonstrated knowledge and competence regarding the National Flood Insurance Program.

(c) DUTIES.—The Task Force shall—

(1) make recommendations to the head of each Federal agency and corporation referred to under subsection (b)(1) regarding the establishment or adoption of standardized enforcement procedures among such agencies and corporations responsible for enforcing compliance with the requirements under the National Flood Insurance Program to ensure the fullest possible compliance with such requirements;

(2) study the extent to which Federal agencies and the secondary mortgage market can provide assistance in ensuring compliance with the requirements under the National Flood Insurance Program;

(3) study the extent to which existing programs of Federal agencies and corporations for compliance with the requirements under the National Flood Insurance Program can serve as a model for other Federal agencies responsible for enforcing compliance, and submit to the Congress a report describing the study and any conclusions;

(4) study—

(A) the extent to which the flood insurance premium rate structure could be revised to—

(i) minimize existing premium rate subsidies;

(ii) reduce or eliminate disaster assistance payments in high-risk erosion areas;

(iii) incorporate premium rate adjustments for erosion hazards; and

(iv) account for catastrophic loss events; and

(B) how changes in the premium rate structure could potentially impact other Federal disaster assistance programs;

(5) propose strategies to establish an actuarial-based premium structure to account for all insurable risks identified under the National Flood Insurance Act of 1968, as amended by this title; and

(6) develop guidelines regarding enforcement and compliance procedures, based on the studies and findings of the Task Force and publishing the guidelines in a usable format.

(d) REPORTS.—Not later than 2 years after the date of enactment of this title, the Task Force shall transmit to the Congress a report describing its studies and any conclusions.

(e) COMPENSATION.—Members of the Task Force shall receive no additional compensation by reason of their service on the Task Force.

(f) CHAIRPERSON.—The Director shall select 1 member to serve as the chairperson of the Task Force (hereafter in this section referred to as the "Chairperson").

(g) MEETINGS AND ACTION.—The Task Force shall meet at the call of the Chairperson or a majority of the members of the Task Force and may take action by a vote of the majority of the members. The Federal Insurance Administrator shall coordinate and call the initial meeting of the Task Force.

(h) OFFICERS.—The Chairperson may appoint officers to carry out the duties of the Task Force under subsection (c).

(i) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairperson, the head of any of the Federal agencies and corporations referred to in subsection (b)(1) may detail, on a nonreimbursable basis, any of the personnel of the agency to the Task Force to assist the Task Force in carrying out its duties under this title.

(j) POWERS.—In carrying out this section, the Task Force may hold hearings, sit and act at times and places, take testimony, receive evidence and assistance, provide information, and conduct research as the Task Force considers appropriate.

(k) TERMINATION.—The Task Force shall terminate 2 years after the date on which all members of the Task Force have been designated under subsection (b)(1).

Subtitle F—Miscellaneous Provisions

SEC. 661. MAXIMUM FLOOD INSURANCE COVERAGE AMOUNTS.

(a) IN GENERAL.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting "and" at the end of clause (i); and

(B) by striking clause (iii);

(2) by striking subparagraph (B) of paragraph (1) and inserting the following new subparagraph:

"(B) in the case of any nonresidential property, including churches—

"(i) $100,000 aggregate liability for each structure; and

"(ii) $100,000 aggregate liability for any contents related to each structure;";

(3) by striking subparagraph (C) of paragraph (1);

(4) in paragraph (2), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount, including the limits specified in clause (i) of paragraph (1)(A), of $250,000 multiplied by the number of dwelling units in the building;";

(5) in paragraph (3), by striking "so as to enable" and all that follows through the end of the paragraph and inserting "up to an amount of $90,000 for any single-family dwelling and $240,000 for any residential structure containing more than one dwelling unit;"; and

(6) by striking paragraph (4) and inserting the following new paragraph:

"(4) in the case of any nonresidential property, including churches, additional flood insurance in excess of the limits specified in clauses (i) and (ii) of paragraph (1)(B) shall be made available to every insured upon renewal and every applicant for insurance up to an amount of $2,400,000 for each structure and $2,400,000 for any contents related to each structure; and".

(b) ACTUARIAL RISK PREMIUMS ON REPETITIVE LOSS STRUCTURES.—Section 1306(b) of the Na-

tional Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (5), by striking "and" at the end; and

(2) by striking paragraph (6) and inserting the following new paragraph:

"(6) upon determining that a property is a repetitive loss structure, and after making a payment to the insured under section 1304(e), the Director shall charge the applicable risk premium rate for flood insurance based on consideration of the risk involved and accepted actuarial principles under section 1307(a)(1), except that the Director may not increase the premium rate above the level authorized in paragraph (7); and".

(c) ANNUAL 10-PERCENT PREMIUM RATE INCREASE CAP.—Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended by adding at the end the following:

"(7) the Director may not increase the premium rate applied to a structure in any 12-month period by more than 10 percent over the rate previously applied to that structure during the preceding 12-month period.".

(d) CONFORMING AMENDMENTS.—Section 1306(b)(5) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)(5)) is amended—

(1) by striking "(A), (B), or (C)" and inserting "(A) or (B)"; and

(2) by striking "(1)(C),".

SEC. 662. ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.–

(a) IN GENERAL.—Section 1304 of the National Flood Insurance Act of 1968 (42 U.S.C. 4011) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of compliance with land use and control measures for—

"(1) properties that are repetitive loss structures;

"(2) properties that have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and

"(3) properties that have sustained flood damage on multiple occasions, if the Director determines that it is cost-effective and in the best interests of the National Flood Insurance Fund to require compliance with the land use and control measures.

The Director shall impose a surcharge on each insured of not more than $50 per policy to provide cost of compliance coverage in accordance with the provisions of this subsection.".

(b) APPLICABILITY.—The provisions of subsection (a) shall apply only to structures that sustain flood-related damage after the date of enactment of this title.

SEC. 663. FLOOD INSURANCE PROGRAM ARRANGEMENTS WITH PRIVATE INSURANCE ENTITIES.

Section 1345(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4081(b)) is amended by striking the period at the end and inserting the following: "and without regard to the provisions of the Federal Advisory Committee Act.".

SEC. 664. UPDATING OF FLOOD INSURANCE RATE MAPS.

Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) is amended by adding at the end the following new subsections:

"(e) ASSESSMENT OF NEED TO UPDATE AREAS.—

"(1) PERIODIC ASSESSMENTS.—Not less than once during each 5-year period (the first such period beginning on the date of enactment of the National Flood Insurance Reform Act of 1994), or more often as the Director determines necessary, the Director shall assess the need to revise and update each flood insurance rate map, based on an analysis of all natural hazards affecting flood risks.

"(2) UPON REQUEST.—Upon the request of a State or community stating that a flood insurance rate map needs revision or updating, the Director shall review and update the flood insurance rate map for the State or community. The Director may require the State or community to pay a portion of the cost of updating the map.

"(f) AVAILABILITY.—To promote compliance with the requirements of this title, the Director shall make flood insurance rate maps and related information available free of charge to Federal agencies and to State agencies directly responsible for coordinating the National Flood Insurance Program and to appropriate representatives of communities participating in the National Flood Insurance Program, and at a reasonable cost to all other persons pursuant to section 1310.

"(g) NOTIFICATION.—The Director shall publish in the FEDERAL REGISTER or by other comparable method, notice of each revision to or update of a flood insurance rate map, issued in the form of a Letter of Map Amendment or Letter of Map Revision. Each map revision or update shall become effective upon publication. Such comparable methods shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as the Federal Register. Notices published in the Federal Register, or otherwise, shall also include information on how to obtain copies of the revisions or updates.

"(h) AVAILABILITY.—On March 1 and October 1 of each year, the Director shall publish separately and make available in their entirety within a compendium, all revisions to and updates of flood insurance rate maps and all Letters of Map Amendment and Letters of Map Revision that were published in the Federal Register or distributed through other comparable methods during the preceding 6 months, free of charge, to Federal agencies, States, and communities participating in the National Flood Insurance Program pursuant to section 1310 and at cost to all other persons.".

SEC. 665. EVALUATION OF EROSION HAZARDS.

(a) IN GENERAL.—As soon as practicable and not later than 2 years after the date of enactment of this Act, the Director shall submit to Congress a report—

(1) listing all communities that are likely to be identified as having an erosion hazard areas;

(2) estimating the amount of flood insurance claims attributable to erosion;

(3) assessing the full economic impact of erosion on the National Flood Insurance Fund;

(4) measuring the costs and benefits of expenditures necessary from the National Flood Insurance Fund to complete mapping of erosion hazard areas.

(b) AUTHORIZATION TO MAP EROSION HAZARD AREAS.—In developing an estimate of the amount of flood insurance claims attributable to erosion pursuant to subsection (a), the Director is authorized to map a statistically valid and representative number of communities with erosion hazard areas throughout the United States, including coastal, Great Lakes and riverine areas.

(c) ECONOMIC IMPACT STUDY.—The report required under subsection (a)—

(1) shall assess the economic impact of—

(A) erosion on communities likely to be identified as having erosion hazard areas; and

(B) the denial of flood insurance and the establishment of actuarial rates in communities likely to be identified as having erosion hazard areas;

(2) shall be prepared by an independent private sector firm;

(3) provide for consultation with a statistically valid and representative number of communities likely to be identified as having erosion hazard areas; and

(4) address all significant economic factors, including the impact on—

(A) the value of residential and commercial properties in communities with erosion hazards;

(B) community tax revenues due to potential changes in property values or commercial activity;

(C) employment, including the potential loss or gain of existing and new jobs in the community;

(D) existing businesses and future economic development; and

(E) the estimated cost of Federal and State disaster assistance to flood victims.

(d) COST AND BENEFITS OF MAPPING.—The report required under subsection (a), shall—

(1) measure the costs and benefits of mapping erosion hazard areas based upon the Director's estimate of the actual and prospective amount of flood insurance claims attributable to erosion. If the Director determines that the savings to the National Flood Insurance Fund will exceed the cost of mapping erosion hazard areas, the Director shall assess whether the expenditures to map erosion hazard areas is the most cost-beneficial use of flood insurance premiums in light of alternative uses of those funds, including—

(A) funding the mitigation assistance program under section 1367 of the National Flood Insurance Act of 1968 (as added by section 643 of this Act);

(B) funding additional coverage for compliance with land use and control measures under section 1304(b) of the National Flood Insurance Act of 1968 (as added by section 662 of this Act); and

(C) revising and updating flood insurance rate maps under section 1360(e) of the National Flood Insurance Act of 1968 (as added by section 664 of this Act).

(2) measure the costs and benefits of mapping erosion, other than those directly related to the financial condition of the National Flood Insurance Program, and the cost of not mapping erosion.

(e) DEFINITION.—For purposes of this section the term "erosion hazard area" means, based on erosion rate information and other historical data available, an area where erosion or avulsion is likely to result in damage to or loss of buildings and infrasturcture within a 60-year period.

(f) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to the Director $5,000,000 to carry out this section.

SEC. 666. COORDINATION OF FLOOD INSURANCE RATE MAP REVISIONS AND UPDATES WITH COASTAL ZONE MANAGEMENT PROGRAMS.

IN GENERAL.—In the implementation of revisions to and updates of flood insurance rate maps, the Director shall consult and share information with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

SEC. 667. TECHNICAL MAPPING ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established a council to be known as the Technical Mapping Advisory Council (hereafter in this section referred to as the "Council").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the Director, or the Director's designee, and 12 additional members to be appointed by the Director or his designee, and shall include—

(A) the Under Secretary of Commerce for Oceans and Atmosphere (or his or her designee);

(B) a member of recognized surveying and mapping professional associations and organizations;

(C) a member of recognized professional engineering associations and organizations;

(D) a member of recognized professional associations or organizations representing flood hazard determination firms;

(E) a representative of the United States Geologic Survey;

(F) a representative of State geologic survey programs;

(G) a representative of State national flood insurance coordination offices;

(H) a representative of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and

(I) a representative of a regulated lending institution.

(2) QUALIFICATIONS.—Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using flood insurance rate maps.

(c) DUTIES.—The Council shall—

(1) make recommendations to the Director on how to improve in a cost-effective manner the accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps;

(2) recommend to the Director mapping standards and guidelines for flood insurance rate maps; and

(3) transmit an annual report to the Director describing—

(A) the activities of the Council;

(B) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update flood insurance rate maps, as established by the amendments made under section 664; and

(C) a summary of recommendations made by the Council to the Director.

(d) CHAIRPERSON.—The members of the Council shall elect 1 member to serve as the chairperson of the Council (hereafter in this section referred to as the "Chairperson").

(e) COORDINATION.—To ensure that the Council's recommendations are consistent to the maximum extent practicable with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to OMB Circular A–16).

(f) COMPENSATION.—Members of the Council shall receive no additional compensation by reason of their service on the Council.

(g) MEETINGS AND ACTIONS.—

(1) IN GENERAL.—The Council shall meet not less than twice each year at the request of the Chairperson or a majority of its members and may take action by a vote of the majority of the members.

(2) INITIAL MEETING.—The Director, or a person designated by the Director, shall request and coordinate the initial meeting of the Council.

(h) OFFICERS.—The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(i) STAFF OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.—Upon the request of the Chairperson, the Director may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.

(j) POWERS.—In carrying out this section, the Council may hold hearings, receive evidence and assistance, provide information, and conduct research as it considers appropriate.

(k) TERMINATION.—The Council shall terminate 5 years after the date on which all members of the Council have been appointed under subsection (b)(1).

SEC. 668. FUNDING FOR INCREASED ADMINISTRATIVE AND OPERATIONAL RESPONSIBILITIES.

(a) AVAILABILITY OF FUND.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)), as amended by section 632, is amended in the matter preceding paragraph (1), by inserting "(except as otherwise provided)" after "without fiscal year limitation".

(b) CREDITS OF FUND.—Section 1310(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) any penalties collected under section 102(f) of the Flood Disaster Protection Act of 1973; and".

SEC. 669. SEPARATE ACCOUNT FOR NATIONAL FLOOD INSURANCE FUND.

Section 1310(a) of the National Flood Insurance Act (42 U.S.C. 4017(a)) is amended by inserting before "which shall be available" the following: "which shall be maintained in the Treasury as an account separate from any other funds available to the Director, and".

SEC. 670. NONWAIVER OF FLOOD PURCHASE REQUIREMENT FOR RECIPIENTS OF FEDERAL DISASTER ASSISTANCE.

Section 311(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5154(b)) is amended by adding at the end the following: "The requirements of this subsection may not be waived under section 301.".

SEC. 671. INSURANCE WAITING PERIOD.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4014) is amended by adding at the end the following new subsection:

"(e)(1) The Director shall establish a waiting period of not less than 10 days from the presentment of payment of a premium for the initial purchase of flood insurance under this title. Flood insurance coverage shall not be available with respect to any claim for damage incurred during such waiting period.

"(2) This subsection shall not apply to the initial purchase of flood insurance under this title when the purchase of insurance is in connection with the making, increasing, extension, or renewal of a loan.".

SEC. 672. AGRICULTURAL STRUCTURES.

Section 1361 of the National Flood Insurance Act of 1968 (42 U.S.C. 4102) is amended by adding at the end the following new subsection:

"(d) AGRICULTURAL STRUCTURES.—

"(1) EXEMPTION FROM FLOODWAY ACTIVITY RESTRICTIONS.—Notwithstanding any other provision of law, the adequate land use and control measures adopted in an area (or subdivision thereof) pursuant to section 1315(a) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to pre-damaged conditions of an agricultural structure that—

"(A) is a repetitive loss structure; or

"(B) has incurred flood-related damage to the extent that the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'agricultural structure' means any structure used exclusively in connection with the production, harvesting, storage, raising, or drying of agricultural commodities; and

"(B) the term 'agricultural commodities' means agricultural commodities and livestock.".

SEC. 673. IMPLEMENTATION REVIEW BY THE DIRECTOR.

Section 1320 of the National Flood Insurance Act of 1968 (42 U.S.C. 4027) is amended—

(1) by striking "The Director" and inserting "(a) IN GENERAL.—The Director"; and

(2) by adding at the end the following new subsection:

"(b) EFFECTS OF FLOOD INSURANCE PROGRAM.—The Director shall include, as part of the biennial report submitted under subsection (a), a chapter reporting on the effects on the flood insurance program observed through implementation of requirements under the National Flood Insurance Reform Act of 1994.".

SEC. 674. REGULATIONS.

The Director and the head of any appropriate Federal agency may each issue any regulations necessary to carry out the applicable provisions of this title and the applicable amendments made by this title.

SEC. 675. PROHIBITED FLOOD DISASTER ASSISTANCE.

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)) is amended—

(1) by striking ", during the anticipated economic or useful life of the project,"; and

(2) by adding at the end the following: "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.".

(c) DEFINITION.—For purposes of this section, the term "flood disaster area" means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters declared after the date of enactment of the National Flood Insurance Reform Act of 1994.

TITLE VII—GENERAL PROVISIONS

SEC. 701. STUDY OF EFFECT OF THE NORTHERN SPOTTED OWL ON SMALL BUSINESS CONCERNS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Small Business Administration; and

(2) the term "small business concerns" has the same meaning as in section 3 of the Small Business Act.

(b) BUSINESS STUDY.—The Administrator in consultation with the Secretary of the Interior shall conduct a study that analyzes—

(1) the nature and extent of economic losses to small business concerns in the forest products industry that have occurred as a result of the

designation of the Northern spotted owl as a threatened species pursuant to section 4 of the Endangered Species Act of 1973, or that are reasonably likely to occur in the future;

(2) the ability of small business concerns to recoup the fair market value of equipment and other property employed in the harvest and processing of timber prior to the listing of the Northern spotted owl as a threatened species; and

(3) the ability of small business concerns in the affected area to offer alternative products or services for which there is a ready or likely suitable market.

(c) REPORT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Administrator and the Secretary of the Interior shall submit a report of the results of the study conducted under subsection (c) to the President and to the relevant committees of the Senate and the House of Representatives.

(2) OPTIONS.—The report shall include options for Congress and the President for compensating small business concerns for economic losses and for promoting business transition and diversification.

(3) CONSULTATION.—In preparing the report, the Administrator and the Secretary of the Interior shall consult with small business concerns in the forest products industry, and shall solicit comments from the public.

SEC. 702. NEGATIVE INFORMATION ABOUT CONSUMER.

Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding after paragraph (3) the following:

"(4) The dates, original payees, and amounts of any checks upon which is based any negative information about the consumer included in the file at the time of the disclosure.".

SEC. 703. UNITED NATIONS RESOLUTIONS CONCERNING JERUSALEM.

(a) FINDINGS.—The Congress finds that—

(1) for three thousand years Jerusalem has been the focal point of jewish religious devotion;

(2) Jerusalem is also considered a holy city by the members of other religious faiths;

(3) the once thriving Jewish community of the historic Old City of Jerusalem was driven out by force during the 1948 Arab-Israeli War;

(4) from 1948 to 1967, Jerusalem was a divided city and Israeli citizens of all faiths as well as Jewish citizens of all states were denied access to holy sites in the area controlled by Jordan;

(5) in 1967, Jerusalem was reunited during the conflict known as the Six Day War;

(6) since 1967, Jerusalem has been a united city administered by Israel and persons of all religious faiths have been guaranteed full access to holy sites within the city;

(7) in 1990, the United States Senate and House of Representatives overwhelmingly adopted Senate Concurrent Resolution 106 and House Concurrent Resolution 290 declaring that Jerusalem, the capital of Israel, "must remain an undivided city";

(8) the Vice President has stated the Administration's intention not to "forget the meaning of Jerusalem";

(9) the Secretary of State recently reiterated United States opposition to attempts in the United Nations to refer to Jerusalem as "occupied territory";

(10) it is reported that the United Nations Security Council may consider a resolution condemning the Hebron massacre but which also refers to Jerusalem as "occupied" territory.

(b) SENSE OF CONGRESS.—Therefore, it is the sense of the Congress that—

(1) the Administration should be commended for its efforts not to "forget the meaning of Jerusalem" and to oppose attempts in the United Nations to refer to Jerusalem as "occupied" territory;

(2) sacrificing core principles for short term objectives will ultimately retard, not advance, the peace process;

(3) the United States should exercise its veto in the United Nations Security Council on any Security Council resolution that states or implies that Jerusalem is "occupied" territory.

SEC. 704. AMENDMENT TO THE FEDERAL RESERVE ACT.

SECTION 11.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by inserting at the end thereof the following new subsection:

"(p) AUTHORITY.—The Board of Governors of the Federal Reserve System and the Federal Open Market Committee may each act in the Board's or the Committee's own name and through the Board's or the Committee's own attorneys in enforcing any provision of this title, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board of Governors of the Federal Reserve System or the Federal Open Market Committee is a party.".

SEC. 705. OVERSIGHT HEARINGS.

It is the sense of the Senate that—

(a) Congress has a constitutional obligation to conduct oversight of matters relating to the operations of the Government, including matters related to any governmental investigations which may, from time to time, be undertaken.

(b) the Majority Leader and the Republican Leader should meet and determine the appropriate timetable, procedures, and forum for appropriate Congressional oversight, including hearings on all matters related to "Madison Guaranty Savings and Loan Association ('MGS&L'), Whitewater Development Corporation and Capital Management Services Inc. ('CMS').".

(c) no witness called to testify at these hearings shall be granted immunity under sections 6002 and 6005 of title 18, United States Code, over the objection of Special Counsel Robert B. Fiske, Jr.

(d) the hearings should be structured and sequenced in such a manner that in the judgment of the Leaders they would not interfere with the ongoing investigation of Special Counsel Robert B. Fiske, Jr.

SEC. 706. INSURANCE TRANSFER AGREEMENT.

(a) SENSE OF SENATE.—It is the sense of the Senate that no insurer shall enter into a transfer agreement or transfer a contract of insurance pursuant to a transfer agreement unless the transferring insurer has first provided or caused to be provided to each policyholder of the insurer affected by the agreement a notice of the intent of the insurer to transfer the contract of insurance held by such policyholder.

(b) FORM OF NOTICE.—The notice shall be sent by first-class mail, addressed to the last known address of the policyholder or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of intent to transfer shall also be sent to the transferring insurer's agent or broker of record on the affected policy.

(c) CONTENT OF NOTICE.—The notice required by subsection (a) shall state or provide—

(1) the date the intended transfer and novation of the contract of insurance of the policyholder is proposed to take place and become effective;

(2) the name, address, and telephone number of the transferring insurer and the assuming insurer under the proposed transfer agreement;

(3) that the transfer and novation of the insurance contract of the policyholder cannot take effect without the written consent of the policyholder, except as provided in section 5 of this Act;

(4) the procedures and any time limitation for consenting to the transfer and novation;

(5) a summary informing the policyholder regarding any adverse effect that the policyholder might experience as a result of consenting to the transfer and novation;

(6) a statement that, without the written consent of the policyholder, the transferring insurer will remain as the insurance company of the policyholder or beneficiary, except as provided in section 5 of this Act;

(7) a statement that the assuming insurer is licensed to write the type of business being transferred in the State where the policyholder resides, or is otherwise authorized, under applicable law, to assume such business;

(8) the name, address, and telephone number of the person designated by the transferring insurer as the person for receiving the written consent of the policyholder affected by the proposed transfer and novation;

(9) the address and telephone number of the chief insurance regulatory official of the State in which the policyholder resides;

(10) financial data for the transferring insurer and the assuming insurer involved in the proposed transfer agreement, including—

(A)(i) the ratings, together with enough information to understand where the ratings fall within the range of rating categories of each rating agency, for the last 5 years, if available, or if not available for 5 years, for such lesser period as is available, from each nationally recognized insurance company rating organization that has rated the insurer, including an explanation of the meaning of each rating category of each rating organization;

(ii) if ratings are unavailable for any year of the 5-year period, a disclosure of this fact; and

(iii) a statement that any or all of the above insurance company rating organization reports may be obtained at no cost by writing or calling an address or phone number listed in the statement;

(B) a balance sheet as of December 31 for each of the 3 years immediately preceding the notice, if available, or for such lesser period as is available, and as of the date of the most recent quarterly statement;

(C) a copy of the Management's Discussion and Analysis that was filed as a supplement to the annual statement of the preceding year; and

(D) an explanation of the reason for the proposed transfer signed by the highest executive official of the transferring insurer and the assuming insurer;

(11) a statement setting forth the financial condition of the transferring insurer and of the assuming insurer under the proposed transfer agreement, and the effect the transaction will have on the financial condition of each such insurer;

(12) an opinion by a disinterested third-party expert, such as an actuary, finding that the transfer is fair and in the best interests of the policyholders affected by the transfer, and a statement that the report on which the opinion is based is available at no cost by writing or calling an address and phone number listed in the statement.

MESSAGES FROM THE HOUSE

At 1:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 636) to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes; with amendments; it insists upon its amendments to the bill; asks for a conference with the Senate on the

disagreeing votes of the two Houses thereon, and appoints the following as conferees on the part of the House:

From the Committee on the Judiciary: Mr. BROOKS, Mr. SCHUMER, Mr. EDWARDS of California, Mr. CONYERS, Mrs. SCHROEDER, Mr. SENSENBRENNER, Mr. HYDE, and Mr. CANADY;

From the Committee on Energy and Commerce: Mr. DINGELL, Mr. WAXMAN, Mr. SYNAR, Mr. MOOREHEAD, and Mr. BLILEY.

The message also announced that pursuant to the provisions of 22 U.S.C. 276a–1, the Speaker appoints to the delegation to attend the conference of the Interparliamentary Union to be held at Paris, France, from March 20, 1994, to March 26, 1994, the following Members on the part of the House: Mr. HILLIARD, Mr. THOMPSON of Mississippi, and Mr. DORNAN.

The message further announced that pursuant to the provisions of 22 U.S.C. 276a–1, the Speaker appoints to the delegation to attend the conference of the Interparliamentary Union to be held in Paris, France, from March 20, 1994, to March 26, 1994, the following Members on the part of the House: Mr. ENGEL, chairman, Mr. FALEOMAVAEGA, vice chairman, Mr. PAYNE of New Jersey, Mr. TANNER, and Miss COLLINS of Michigan.

The message also announced that pursuant to the provisions of 22 U.S.C. 276h, the Speaker appoints as members of the United States delegation of the Mexico-United States Interparliamentary Group for the second session of the One Hundred Third Congress the following Members on the part of the House: Mr. DE LA GARZA, chairman, Mr. TORRICELLI, vice chairman, Mr. GEJDENSON, Mr. COLEMAN, Mr. MILLER of California, Mr. RANGEL, Mr. MATSUI, Mr. GILMAN, Mr. GOODLING, Mr. DREIER, Mr. KOLBE, and Mr. DELAY.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of March 17, 1994, the following reports of committees were submitted on March 18, 1994:

By Mr. SASSER, from the Committee on the Budget, without amendment:

S. Con. Res. 63: An original concurrent resolution setting forth the congressional budget for the U.S. Government for the fiscal years 1995, 1996, 1997, 1998, and 1999 (Rept. No. 103–238).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. FORD:

S. 1953. A bill to amend the Flood Control Act of 1968 to prohibit the imposition of certain fees for the use of developed recreation sites and facilities, and for other purposes; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FORD:

S. 1953. A bill to amend the Flood Control Act of 1968 to prohibit the imposition of certain fees for the use of developed recreation sites and facilities, and for other purposes; to the Committee on Environment and Public Works.

FLOOD CONTROL ACT OF 1968 AMENDMENT ACT OF 1994

Mr. FORD. Mr. President, today I am introducing a bill prohibiting the Corps of Engineers from charging user fees at underdeveloped or lightly developed lake facilities in Kentucky and other States. The corps now charges user fees at highly developed facilities requiring round-the-clock maintenance and supervision of corps personnel. Clearly, user fees are proper in these situations.

But beginning in May of this year, the corps proposes to establish user fees for beaches, boat ramps, and other unmaintained facilities that are currently free of charge. For many hard-working families in my State, you may as well put up "closed for the season" signs. All across my State—and I am sure my colleagues' own States—there are families who put in a hard day's work, pay their bills, put a roof over the family's head and food on the table. Once they have done all that, there is not much left in the family budget for an expensive vacation.

Because States understood there was a need for easily accessible, affordable places for families to vacation, they gave up land so that many of these corps-maintained lakes could be built. I think all would agree that the citizens whose tax dollars built those facilities and whose tax dollars maintain these facilities should be able to use these facilities.

Mr. President, my legislation will assure the park gates will not be closed for any tourist, regardless how big or how small their vacation budget might be.

I might say, the distinguished Congressman from the First District in Kentucky has filed a companion bill in the House, and I hope my colleagues will join me.

I send the bill to the desk and ask that it be appropriately referred. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. WALLOP. Mr. President, I will say to my friend from Kentucky that I have not seen the bill, but I am inclined to be on it with him. I see all over the place signs that we are going to start charging for unimproved access to various recreation forests, national recreation areas, and other kinds of things.

I hope that it puts in the back of his mind a little bit the thought as to what it is to deal with unimproved facilities and that he has a gentle thought at grazers as the vote comes down.

Mr. FORD. Mr. President, without the Senator losing his right to the floor, I do have a general thought. It just seems as if they were charged 70 percent, and it would be to maintain it. Where you have unmaintained boat ramps, picnic areas, $2 to take your boat to put it in the water, $1 to take your family, each person, or so much per carload to go in, it seems to me, as we say down in Kentucky, it is too much sugar for the sand.

Mr. WALLOP. Mr. President, I say to the Senator, I agree with him. We are seeing signs of it all over our State. I am seeing signs of it in various published statements around and about. I think it is time for Congress to speak to it.

It is well and good to spend money on improving things and providing people with something for the value which they are being asked to pony up. However, if there is no value at all, it seems genuinely unfair to ask people to pay for that.

ADDITIONAL COSPONSORS

S. 208

At the request of Mr. BUMPERS, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 208, a bill to reform the concessions policies of the National Park Service, and for other purposes.

S. 1075

At the request of Mr. WARNER, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1075, a bill to designate the Federal building in Fredericksburg, Virginia, as the "Samuel E. Perry Postal Building", and for other purposes.

S. 1142

At the request of Mr. HARKIN, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1142, a bill to improve counseling services for elementary school children.

S. 1485

At the request of Mr. DECONCINI, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1485, a bill to extend certain satellite carrier compulsory licenses, and for other purposes.

S. 1806

At the request of Mr. NICKLES, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1806, a bill to rescind the fee required for the use of public recreation areas at lakes and reservoirs under the jurisdiction of the Army Corps of Engineers, and for other purposes.

S. 1907

At the request of Mr. ROCKEFELLER, the name of the Senator from Min-

nesota [Mr. WELLSTONE] was added as a cosponsor of S. 1907, a bill to require that the Department of Veterans Affairs adjudicate and resolve certain claims relating to medical malpractice in the health care services provided by the Department.

AMENDMENTS SUBMITTED

MARINE MAMMAL PROTECTION ACT

KERRY (AND STEVENS) AMENDMENT NO. 1550

Mr. JOHNSTON (for Mr. KERRY for himself and Mr. STEVENS) proposed an amendment to amendment No. 1550 proposed by Mr. KERRY to the bill (S. 1636) to authorize appropriations for the Marine Mammal Protection Act of 1972 to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Mammal Protection Act Amendments of 1994".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) authorize appropriations to carry out the Marine Mammal Protection Act of 1972 for the fiscal years 1994 through 1999;

(2) ensure that the incidental mortality and serious injury of marine mammals in commercial fisheries does not cause any species or stock of marine mammals to be reduced to or maintained at, for significant periods of time, a level that is below the lower limit of its optimum sustainable that is below the lower limit of its optimum sustainable population range;

(3) prohibit intentional killing of marine mammals during commercial fishing;

(4) improve efforts to identify and address the most significant problems involving incidental mortality and serious injury of marine mammals in commercial fishing operations, considering the population size and status of the affected marine mammal stocks and the numbers of marine mammals that are incidentally killed or injured in commercial fisheries;

(5) ensure that the procedure for authorizing the incidental taking of marine mammals in commercial fisheries is consistent with the long-term objective of identifying and taking such steps as may be practicable to reduce incidental mortality and serious injury from commercial fishing operations to insignificant rates approaching zero; and

(6) continue cost-effective programs for reliably monitoring (A) the levels of incidental mortality and serious injury of marine mammals in commercial fisheries and (B) the size and current population trends of the affected marine mammal stocks.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—Section 7(a) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes, approved October 9, 1981 (16 U.S.C. 1384(a)), is amended to read as follows:

"(a) DEPARTMENT OF COMMERCE.—(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972 (other than sections 117 and 118 of that Act), $12,138,000 for fiscal year 1994, $12,623,000 for fiscal year 1995, $13,128,000 for fiscal year 1996, $13,653,000 for fiscal year 1997, $14,200,000 for fiscal year 1998, and $14,768,000 for fiscal year 1999.

"(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118 of the Marine Mammal Protection Act of 1972, $15,000,000 for each of the fiscal years 1994 through 1999.".

(b) DEPARTMENT OF THE INTERIOR.—Section 7(b) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384(b)), is amended to read as follows:

"(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, $8,000,000 for fiscal year 1994, $8,600,000 for fiscal year 1995, $9,000,000 for fiscal year 1996, $9,400,000 for fiscal year 1997, $9,900,000 for fiscal year 1998, and $10,296,000 for fiscal year 1999.".

"(c) MARINE MAMMAL COMMISSION.—Section 7(c) of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1407), is amended to read as follows:

"(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out such functions and responsibilities as it may have been given under title II of the Marine Mammal Protection Act of 1972, $1,350,000 for fiscal year 1994, $1,400,000 for fiscal year 1995, $1,450,000 for fiscal year 1996, $1,500,000 for fiscal year 1997, $1,500,000 for fiscal year 1998, and $1,600,000 for fiscal year 1999.".

SEC. 4. MORATORIUM AND EXCEPTIONS.

(A) IN GENERAL.—The introductory matter of section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)) is amended—

(1) by inserting ", harassment," immediately before "and importation"; and

(2) by inserting "or harassment" immediately after "for the taking".

(b) PERMITS FOR RESEARCH, DISPLAY, ENHANCING SURVIVAL OR RECOVERY.—Section 101(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(1)) is amended to read as follows:

"(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for the taking, harassment, and importation of marine mammals for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock. Such permits may be issued if the taking, harassment, or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and the Committee shall recommend any proposed taking, harassment, or importation which is consistent with the purpose and policies of section 2. The Secretary shall, if the Secretary grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.".

(c) AUTHORIZATION FOR INCIDENTAL TAKING DURING COMMERCIAL FISHERIES.—The first sentence of section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended by inserting immediately before the period at the end the following: ", or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103.".

(d) TAKING OR IMPORTATION FROM DEPLETED STOCKS.—(1) Section 101(a)(3)(A) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(A)) is amended by inserting ", except as provided in paragraph (6)," after "that" in the second proviso.

(2) Section 101(a)(3)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(B)) is amended by inserting ", or as provided for under paragraph (5) of this subsection," immediately after "subsection,".

(e) AUTHORIZATION FOR HARASSMENT OF SMALL NUMBERS OF MARINE MAMMALS.—Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)) is amended—

(1) in subparagraph (A), by inserting "or harassment" immediately after "taking" each place it appears; and

(2) by adding at the end the following new subparagraph:

"(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than one year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

"(I) will have a negligible impact on such species or stock; and

"(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120.

"(ii) The authorization for such activity shall prescribe, where applicable—

"(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120;

"(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for subsistence uses pursuant to subsection (b), or section 109(f), or pursuant to cooperative agreement under section 120; and

"(III) requirements pertaining to the monitoring and reporting of such taking, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursu-

ant to subsection (b), or section 109(f), or pursuant to a cooperative agreement under section 120.

"(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

"(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) and (ii) are not being met.

"(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for harassment that occurs in compliance with such authorization."

(f) PERMITS CONCERNING ENDANGERED OR THREATENED MARINE MAMMAL STOCKS.—Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)), as amended by this Act, is further amended by adding at the end the following new subparagraph:

"(E)(i) During any period of three consecutive years, the Secretary shall allow the incidental, but not the intentional, taking or harassment by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

"(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

"(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

"(III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and an incidental take reduction plan has been developed or is being developed for such species or stock.

"(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.

"(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

"(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being substantially complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a substantial change in the information or conditions used to determine such list.

"(v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.".

(g) IMPORTATION OF CERTAIN PRODUCTS.—Section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)) is amended by adding at the end the following new paragraph:

"(6)(A) A marine mammal product may be imported into the United States if the product—

"(i) was owned and exported by any person in conjunction with travel outside the United States;

"(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

"(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

"(B) For the purposes of this paragraph, the term—

"(i) 'Native inhabitant of Russia, Canada, or Greenland' means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

"(ii) 'cultural exchange' means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.".

(h) ACTIONS AFFECTING SECTION 101(b).—Section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)) is amended by adding at the end the following new sentence: "In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2), or fn making any determination or finding under this Act that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.".

(i) TAKING IN DEFENSE OF SELF OR ANOTHER PERSON.—Section 101(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(c)) is amended to read as follows:

"(c) It shall not be a violation of this Act to take a marine mammal if—

"(1) such taking is imminently necessary in self-defense or to save the life of a person in immediate danger; and

"(2) such taking is reported to the Secretary within 48 hours and, whenever feasible, any carcass is made available to the Secretary intact.".

SEC. 5. PERMITS.

Section 104 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374) is amended—

(1) in subsection (a)—

(A) by inserting ", harassment," immediately after "taking"; and

(B) by inserting "except for the incidental taking of marine mammals during the course of commercial fishing operations" immediately before the period at the end; and (2) by amending subsection (c)(3) to read as follows:

"(3)(A) A permit may be issued, for scientific research purposes that are likely to result in the taking or harassment of a marine mammal, to an applicant who submits information with the permit application indicating that the taking or harassment is required to further a bona fide scientific purpose. The Secretary is authorized to issue permits under this paragraph prior to the end of the mandatory public review and comment period if delaying the issuance of such permit could result in harm to a species, stock, or individual marine mammal, or result in loss of unique research opportunities.

"(B) No permit issued for purposes of scientific research under subparagraph (A) shall authorize the lethal taking of a marine mammal unless the applicant submits documentation to the Secretary that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

"(C) Not later than 60 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall grant a general authorization and shall issue implementing regulations allowing bona fide scientific research that is not likely to result in the taking or harassment of a marine mammal. Such authorization shall apply to persons who submit, at least 60 days prior to commencement of the research, a letter of intent to the Secretary specifying—

"(i) the species or stock of marine mammal on which the research will be conducted;

"(ii) the geographic location of the research;

"(iii) the period of time over which the research will be conducted;

"(iv) the purpose of the research, including a description of how the definition of bona fide research as established by the Secretary under this Act would apply; and

"(v) the methods used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Sec-

retary may notify the applicant that the proposed research is likely to result in the taking or harassment of a marine mammal, and that the provisions of subparagraph (A) apply. If no such notification is received, the proposed research shall be covered under the general authorization.".

SEC. 6. CONSERVATION PLANS.

Section 115(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383(b)) is amended by adding at the end the following new paragraph:

"(4) If the Secretary determines that an incidental take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a stock specified under section 117(a)(7), or for stocks which interact with a commercial fishery for which the Secretary has made a determination under section 118(b)(1), any conservation plan prepared under this subsection for such stock shall incorporate the incidental take reduction plan required under section 118 for such stock.".

SEC. 7. STOCK ASSESSMENTS.

(a) IN GENERAL.—Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.) is amended by adding at the end the following new section:

"SEC. 117. STOCK ASSESSMENTS.

"(a) IN GENERAL.— Not later than August 1, 1994, the Secretary shall, after consultation with the appropriate regional scientific working group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall—

"(1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

"(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

"(3) estimate the annual anthropogenic mortality and serious injury of the stock and, for a stock specified under paragraph (7), other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

"(4) describe commercial fisheries that interact with the stock, including—

"(A) the approximate number of vessels actively participating in each such fishery;

"(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

"(C) seasonal or area differences in such incidental mortality or serious injury; and

"(D) the rate, based on a unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;

"(5) categorize the status of the stock as one that either—

"(A) has a level of anthropogenic mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

"(B)(i) meets the criteria described under paragraph (7);

"(ii) is listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or designated as depleted under this Act; or

"(iii) meets the criteria specified in both clause (i) and (ii);

"(6) estimate the calculated removal level for the stock, describing the information used to calculate it, including the recovery factor; and

"(7) specify whether the Secretary has reason to believe that the level of anthropogenic mortality and serious injury for the stock is such that it may cause the stock to be reduced or maintained below its optimum sustainable population.

"(b) PUBLIC COMMENT.—(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

"(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 101(b) applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 101(b).

"(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under section (d), and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after—

"(A) the close of the public comment period on a draft stock assessment or revision thereof; or

"(B) final action on an agency proceeding pursuant to paragraph (2).

"(c) REVIEW AND REVISION.—(1) The Secretary, in consultation with the appropriate regional scientific review group established under subsection (d), shall review stock assessments under this section—

"(A) annually for stocks specified under subsection (a)(7) or for which substantial new information is available; and

"(B) at least once every 3 years for all other marine mammal stocks.

"(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b).

"(d) REGIONAL SCIENTIFIC REVIEW GROUPS.—(1) Not later than 60 days after the date of enactment of this section, the Secretary of Commerce shall, in consultation with the Secretary of Interior (with respect to marine mammals under that Secretary's jurisdiction), the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, environmental and fishery groups, establish at least two independent regional scientific review groups consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 101(b). The Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific working group. The regional scientific review group shall advise the Secretary on all aspects of the stock assessments required under this section.

"(2) The regional scientific review groups established under this section shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

"(3) Members of the regional scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon requests, for reasonable travel costs and expenses incurred in performing their duties as members of such regional scientific review groups.

"(4) The Secretary may appoint or reappoint individuals to the regional scientific working groups under paragraph (1) as needed.

"(e) EFFECT ON SECTION 101(b).—This section shall not affect or otherwise modify the provisions of section 101(b).".

SEC. 8. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.

"(a) IN GENERAL.—(1) Effective on the date of enactment of this section, and except as provided in section 114 and in paragraphs (2), (3), and (4) of this section, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

"(2) In the case of the incidental taking of marine mammals from species or stocks designated under this Act as depleted on the basis of their listing as threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 101(a)(5)(E) of this Act shall apply.

"(3) Sections 104(h) and title III, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

"(4) This section shall not govern the taking of marine mammals from the California population of sea otters to which the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500) applies.

"(5) Sections 103 and 104 shall not apply to the incidental taking of marine mammals under the authority of this section.

"(6) Except as provided in section 101(c)(2), the intentional killing of any marine mammal in the course of commercial fishing operations is prohibited.

"(b) INCIDENTAL TAKE REDUCTION PLANS.—(1) The Secretary shall develop and implement an incidental take reduction plan designed to assist in the recovery of each marine mammal stock that is specified under section 117(a)(7) which interacts with a commercial fishery listed under subsection (f)(1)(A) (i) or (ii), and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (f)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has an excessive rate of mortality and serious injury across a number of such marine mammal stocks.

"(2) If there is insufficient funding available to develop and implement an incidental

take reduction plan for all such stocks that interact with commercial fisheries listed under subsection (f)(1)(A) (i) or (ii), the Secretary shall give highest priority to the development and implementation of incidental take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the calculated removal level, those that have a small population size, and those which are declining most rapidly.

"(3) Each incidental take reduction plan developed under this subsection for a stock shall include the following:

"(A) A review and evaluation of the information contained in the stock assessment published under section 117 and any substantial new information that may be available.

"(B) An evaluation and estimate of the total number and percentage of animals from the stock that are being killed or seriously injured each year as a result of commercial fishing activities.

"(C) Proposed management measures and voluntary actions for the reduction of incidental mortality and serious injury of marine mammals in commercial fisheries which interact with such stock.

"(D) A long-term strategy to reduce, to insignificant levels approaching a zero rate within 10 years, the incidental mortality and serious injury of marine mammals from the stock in the course of commercial fishing operations.

"(4)(A) Each incidental take reduction plan shall include projected dates for achieving the objectives of the plan.

"(B) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the calculated removal level established under section 117, the plan shall include measures the Secretary expects will reduce, within 6 months after commencement of operations by commercial fisheries that interact with that stock, such mortality and serious injury to a level below the calculated removal level.

"(C) For any stock in which anthropogenic mortality and serious injury exceeds the calculated removal level, other than a stock to which subparagraph (B) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months after commencement of operations by commercial fisheries that interact with that stock, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term 'maximum extent practicable' means to the lowest level that is feasible for such fisheries within the 6-month period.

"(5)(A) At the earliest possible time (not later than 60 days) after the Secretary issues a final stock assessment for a stock specified under section 117(a)(7), the Secretary shall, and for stocks that interact with a fishery listed under subsection (f)(1)(A)(i) for which the Secretary has made a determination under paragraph (1), the Secretary may—

"(i) establish an incidental take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and

"(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.

"(B) The Secretary may charge an incidental take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

"(C) Members of incidental take reduction teams shall be individuals knowledgeable and experienced regarding measures to conserve such stocks and to reduce incidental mortality and serious injury to such stock from commercial fishing operations. Members may include representatives of Federal and State agencies, Councils, interstate fishery commissions, academic and scientific organizations, environmental and fishery groups, Alaska Native organizations and Indian tribes, and others as the Secretary considers appropriate. Incidental take reduction teams shall include a representative of each affected Council and State, and shall, to the maximum extent practicable, include an equitable balance among representatives of government, resource user interests, and public interest groups. Incidental take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.) but their meetings shall be open to the public, after timely notice of the time and place of such meetings.

"(D) Members of incidental take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

"(6) Where the anthropogenic mortality and serious injury from a stock specified under section 117(a)(7) is estimated to be equal to or greater than the calculated removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (f)(1)(A) (i) or (ii), the following procedures shall apply in the development of the incidental take reduction plan for the stock:

"(A)(i) Not later than 6 months after the date of establishment of an incidental take reduction team for the stock, the team shall submit a draft incidental take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

"(ii) Such draft incidental take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

"(B)(i) The Secretary shall take the draft incidental take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, and changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

"(ii) In the event that the incidental take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed incidental take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

"(C) Not later than 90 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental take reduction plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary and the incidental take reduction team shall meet every 6 months, or a such other intervals as the Secretary determines are necessary, to monitor the implementation of the final incidental take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

"(E) The Secretary shall amend the incidental take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

"(7) Where the anthropogenic mortality and serious injury from a stock specified under section 117(a)(7) is estimated to be less than the calculated removal level established under section 117 for such stock and such stock interacts with a fishery listed under subsection (f)(1)(A) (i) or (ii), or for any marine mammal stocks which interact with a commercial fishery listed under subsection (f)(1)(A) (i) for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the incidental take reduction plan for such stock:

"(A)(i) Not later than 11 months after the date of establishment of an incidental take reduction team for the stock, the team shall submit a draft incidental take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

"(ii) Such draft incidental take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

"(B)(i) The Secretary shall take the draft incidental tax reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, and changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

"(ii) In the event that the incidental take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed incidental take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

"(C) Not later than 90 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final incidental take reduction plan and implementing regulations, consistent with the other provisions of this section.

"(D) The Secretary and the incidental take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final incidental take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

"(E) The Secretary shall amend the incidental take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

"(8) In implementing an incidental take reduction plan developed pursuant to this subsection, the Secretary may, where necessary

to implement an incidental take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to—

"(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;

"(B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

"(C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and

"(D) monitor the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations, as set forth in subsection (d).

"(9)(A) Notwithstanding paragraph (5), in the case of any stock to which paragraph (5) applies for which a final stock assessment has not been published under section 117(b)(3) by April 1, 1995, due to a proceeding under section 117(b)(2), or any Federal court review of such proceeding, the Secretary shall establish an incidental take reduction team under paragraph (5) for such stock as if a final stock assessment had been published.

"(B) The draft stock assessment published for stock under section 117(b)(1) shall be deemed the final stock assessment for purposes of preparing and implementing an incidental take reduction plan for such stock under this section.

"(C) Upon publication of a final stock assessment for such stock under section 117(b)(3) the Secretary shall immediately reconvene the incidental take reduction team for such stock for the purpose of amending the incidental take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (6)(E) or (7)(E), as appropriate.

"(D) A draft stock assessment may only be used as the basis for an incidental take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 117(a)(5)(A) and shall revoke any regulations to implement an incidental take reduction plan for such stock.

"(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

"(10) Incidental take reduction plans developed under this section for a species or stock listed as a threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act.

"(c) EMERGENCY REGULATIONS.—(1) If the Secretary finds that incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take action as follows:

"(A) In the case of a stock or species for which an approved incidental take reduction plan is in effect, the Secretary shall—

"(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce such incidental mortality and serious injury in that fishery; and

"(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the incidental take reduction team to address such adverse impact.

"(B) In the case of a stock or species for which an incidental take reduction plan is being developed, the Secretary shall—

"(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

"(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

"(C) In the case of a stock or species for which an incidental take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (f)(1)(A)(iii) which the Secretary believes may be contributing to such adverse impact, the Secretary shall—

"(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

"(ii) immediately review the stock assessment for such stock or species under section 117 and the classification of such commercial fishery under subsection (f)(1)(A) to determine if an incidental take reduction team should be established under this section; and

"(iii) may, where necessary to address such adverse impact, require the placement of observers pursuant to subsection (d) upon vessels in a commercial fishery listed under subsection (f)(1)(A)(iii), if the Secretary has reason to believe that such vessels may be causing incidental mortality and serious injury to marine mammals for such stock.

"(2) Prior to taking action under paragraph (1) (A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Councils, State fishery managers, and the appropriate incidental take reduction team (if established).

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for not more than 180 days, or until the end of the applicable commercial fishing season, whichever is earlier; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for the emergency regulations no longer exist.

"(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

"(d) MONITORING OF INCIDENTAL TAKES.—(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations for commercial fisheries listed under subsection (f)(1)(A) (i) or (ii). The purposes of the monitoring program shall be to—

"(A) obtain statistically reliable estimates of incidental mortality and serious injury;

"(B) determine the reliability of reports of incidental mortality and serious injury under subsection (g); and

"(C) report on the impacts of changes in commercial fishing methods or technology.

"(2) Pursuant to paragraph (1), the Secretary is authorized to place observers on board vessels as necessary, subject to the provisions of this section. Observers may perform other tasks including, but not limited to—

"(A) recording other sources of mortality;

"(B) recording the number of marine mammals sighted and the behavior of such mammals observed in the vicinity of commercial fishing gear;

"(C) Other related scientific or fishery management observations; and

"(D) Collection of marine mammals tissues, where such collection can be done safely and without interruption of commercial fishing operations.

"(3) When determining the distribution of observers among fisheries and vessels within a fishery, the Secretary shall be guided by the following standards;

"(A) the need to obtain the best scientific information available;

"(B) the requirement that assignment of observers be fair and equitable among fisheries and among vessels in a fishery;

"(C) the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

"(D) where practicable, the need to minimize costs and avoid duplication.

"(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

"(A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks designated as depleted on the basis of their listing as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

"(B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from stocks specified under section 117(a)(7).

"(C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

"(5) Notwithstanding paragraph (1), the Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of any marine mammals incidentally taken in the course of commercial fishing operations. The alternative program may include, but need not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

"(6) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a commercial fishery not listed under subsection (f)(1)(A) (i) or (ii).

"(7) The Secretary shall not be required to place an observer on a vessel in a commercial fishery if the Secretary finds that—

"(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable informa-

tion can be obtained from an observer on board the processing vessel to which the fish are delivered;

"(B) the facilities of a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

"(C) for reasons beyond the control of the Secretary, an observer is not available.

"(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except—

"(A) to Federal employees whose duties require access to such information;

"(B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

"(C) when required by court order; or

"(D) in the case of scientific information involving fisheries, to employees of Councils who are responsible for fishery management plan development and monitoring.

"(9) The Secretary shall prescribe such procedures as may be necessary to preserve the confidentiality of proprietary information collected under this subsection, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

"(e) ZERO MORTALITY RATE GOAL.—(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 10 years after the date of enactment of this section.

"(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality rates.

"(3) Three years after such date of enactment, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which inadequate information exists on the level of incidental mortality and serious injury of marine mammals in the fishery.

"(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (b), and shall make recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on any legislative changes needed to achieve the goal specified in paragraph (1).

"(f) REGISTRATION AND AUTHORIZATION.—(1) The Secretary shall, within 90 days after the date of enactment of this section—

"(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 114 (along with an explanation of such changes and a statement of the marine mammals and the approximate number of vessels or persons actively involved in each such fishery) that have—

"(i) frequent incidental mortality and serious injury of marine mammals;

"(ii) occasional incidental mortality and serious injury of marine mammals; or

"(iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

"(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

"(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this Act and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

"(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

"(B) No authorization may be granted under this section to the owner of a vessel unless such vessel—

"(i) is a vessel of the United States; or

"(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

"(C) Except as provided in subsection (a), an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this Act applies.

"(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A) (i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery—

"(i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 114 are deemed to have registered for purposes of this subsection for the period during which such registration is valid;

"(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

"(iii) report as required by subsection (g).

"(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A) (i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.

"(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A) (i) or (ii) who—

"(i) fails to obtain from the Secretary an authorization for such vessel under this section;

"(ii) fails to maintain a current and valid authorization for such vessel; or

"(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title. Such owner and master shall be subject to penalty under sections 105 and 107 for a violation of clause (i) or (ii), and shall be subject to a fine of not more than $100 for each offense for a violation of clause (iii).

"(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement an incidental take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

"(E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (g), instances of incidental mortality or injury of marine mammals in the course of that fishery.

"(4) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (g) and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 114 shall not bar the grant of an authorization under this section for an owner who complies with the requirements of this section. The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with regulations implementing an incidental take reduction plan or emergency regulations issued under this section.

"(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

"(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of

the provisions of this section and the means by which they can comply with its requirements.

"(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.

"(g) REPORTING REQUIREMENT.—The owner or operator of a commercial fishing vessel subject to this Act shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

"(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

"(2) The name and address of the vessel owner or operator.

"(3) The name and description of the fishery.

"(4) the species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

"(h) PENALTIES.—Except as provided in subsection (f), any person who violates this section shall be subject to the provisions of sections 105 and 107, and may be subject to section 106 as the Secretary establishes by regulations.

"(i) VOLUNTARY MEASURES.—Noting in this section shall be construed to limit the Secretary's authority to permit voluntary measures to be utilized in reducing the incidental taking of marine mammals in commercial fisheries.

"(j) CONSULTATION WITH SECRETARY OF THE INTERIOR.—The Secretary shall consult with the Secretary of the Interior on measures promulgated under this section with affect species or stocks under such Secretary's jurisdiction.".

SEC. 9. PENALTIES; PROHIBITIONS.

(a) CIVIL PENALTIES.—Section 105(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(a)(1)) is amended by inserting ", except as provided in section 118," immediately after "thereunder" and by inserting ", harassment," immediately after "taking".

(b) CRIMINAL PENALTIES.—Section 105(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375(b)) is amended by inserting "(except as provided in section 118)" immediately after "thereunder".

(c) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended by striking "and 114 of this title or title III" and inserting in lieu thereof "114, and 118 of this title and title IV".

SEC. 10. AUTHORIZATION TO DETER MARINE MAMMALS NONLETHALLY.

Section 101 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:

"(d)(1) Except as provided in paragraph (2), the provisions of this Act shall not apply to the use of measures—

"(A) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

"(B) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

"(C) by any person, to deter a marine mammal from endangering personal safety; or

"(D) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of the marine mammal.

"(2) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals designated as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Secretary shall recommend specific measures which may be used to nonlethally deter such marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

"(3) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

"(4) The authority to deter marine mammals pursuant to paragraph (1) applies to all marine mammals, including all stocks designated as depleted under this Act.".

SEC. 11. INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE.

Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act—

(1) alters or is intended to alter any treaty between the United States and one or more Indian tribes; or

(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(h) of this Act.

SEC. 12. TRANSITION RULE; IMPLEMENTING REGULATIONS.

(a) TRANSITION RULE.—Section 114(a)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1383a(a)(1)) is amended by striking "ending April 1, 1994," and inserting in lieu thereof "until superseded by regulations prescribed under section 118, or until December 31, 1996, whichever is earlier,".

(b) IMPLEMENTING REGULATIONS.—Except as provided otherwise in this Act, or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regulations to implement this Act and the amendments made by this Act within 270 days after the date of enactment of this Act.

SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended)—

(1) by striking paragraph (17);

(2) by redesignating the second paragraph (15) and paragraph (16) as paragraphs (16) and (17), respectively; and

(3) in paragraph (12)(B), by striking "in title III" and inserting in lieu thereof "In section 118 and in title IV".

(b) MARINE MAMMAL HEALTH AND STRANDING RESPONSE.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended—

(1) by redesignating title III, as added by Public Law 102-587 (106 Stat. 5060), as title IV; and

(2) by redesignating the sections of that title (16 U.S.C. 1421 through 1421h) as sections 401 through 409, respectively.

(c) UNUSUAL MORTALITY EVENT FUND.—Section 405(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1421d(a)), as so redesignated by subsection (b)(2) of this section, in amended by striking "a fund" and inserting in the lieu thereof "an interest bearing fund".

SEC. 14. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362), as amended by this Act, is further amended—

(1) in paragraph (12), as redesignated by section 15 of this Act, by striking "harass," each place it appears; and

(2) by adding at the end of the following new paragraphs:

"(18) The term 'calculated removal level' for a marine mammal stock is the product of the following factors:

"(A) the minimum population estimate of the stock;

"(B) one-half the maximum theoretical or estimated net productivity rate for the stock at a small population size; and

"(C) if the stock is specified under section 117(a)(7), listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or designated as depleted under this Act, a recovery factor that is no greater than 1.0 to ensure that the stock will recover to its optimum sustainable population.

The recovery factor under subparagraph (C) shall not be less than 0.1 for an endangered stock, shall not be less than 0.3 for a threatened or depleted stock, and shall not be less than 0.5 for any other stock.

"(19) The term 'Council' means any Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852).

"(20) The term 'harassment' means any act of approach, pursuit, torment, or annoyance which—

"(A) has the potential to harm a marine mammal in the wild; or

"(B) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to migration, respiration, nursing, breeding, feeding, and sheltering.

"(21) The term 'incidental take reduction plan' means a plan developed under section 118.

"(22) The term 'incidental take reduction team' means a team established under section 118.

"(23) The term 'net productivity rate' means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

"(24) The term 'minimum population estimate' means an estimate of the number of animals in a stock that—

"(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

"(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.".

SEC. 15. HUMAN ACTIVITIES WITHIN PROXIMITY OF WHALES.

(a) LAWFUL APPROACHES.—In waters of the United States surrounding the State of Hawaii, it is lawful for a person subject to the jurisdiction of the United States to approach, by any means other than an aircraft, no closer than 100 yards to a humpback whale or any other whale, regardless of whether the approach is made in waters designated under section 222.31 of title 50, Code of Federal Regulations, as cow/calf waters.

(b) TERMINATION OF LEGAL EFFECT OF CERTAIN REGULATIONS.—Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.

SEC. 16. PINNIPED-FISHERY INTERACTION TASK FORCE.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 119. PINNIPED-FISHERY INTERACTION TASK FORCE.

"(a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provision of this title, the Secretary may permit the lethal removal of pinnipeds in accordance with this section.

"(b) APPLICATION.—Any person may apply to the Secretary to authorize the lethal removal of pinnipeds identified as habitually exhibiting dangerous or damaging behavior that cannot otherwise be deterred. Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the removal.

"(c) ACTIONS IN RESPONSE TO APPLICATION.—(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines that such sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

"(2) A Pinniped-Federal Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

"(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice, the Pinniped-Fishery Interaction Task Force shall—

"(A) recommend to the Secretary whether to approve or deny the proposed lethal removal of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of removal, criteria for evaluating the success of the action, and the duration of the authority; and

"(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

"(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the lethal removal, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

"(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted lethal removal or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

"(d) CONSIDERATIONS.—In considering whether an application should be approved or denied, the Task Force and the Secretary shall consider—

"(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individuals pinnipeds are involved;

"(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

"(3) the extent to which such pinnipeds are causing undue harm, impact, or imbalance with other species in the ecosystem, including fish populations; and

"(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

"(e) LIMITATION.—The Secretary shall not approve lethal removal for any pinniped from a species or stock that is—

"(1) listed as threatened or endangered under the Endangered Species Act of 1973;

"(2) designated as depleted under this Act; or

"(3) specified under section 117(a)(7) of this Act.

"(f) REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.—(1)(A) The Secretary shall conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In carrying out the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

"(i) fish behavior in the presence of predators generally;

"(ii) holding times and passage rates of anadromous fish stocks in areas where such aradromous fish are vulnerable to predation;

"(iii) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

"(iv) other issues the Secretary considers relevant.

"(B) Subject to the availability of appropriations, the Secretary shall, not later than 18 months after the date of enactment of this section, transmit a report on the results of the study required by this paragraph to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

"(C) There are authorized to be appropriated to the Secretary $700,000 for the purpose of carrying out the study required by this paragraph.

"(2) The study conducted under this subsection shall not be considered relevant in any determination under subsection (c), nor reviewed by any Task Force in connection with considerations under subsection (d), until such study is completed, and may not be used by the Secretary as a reason for delaying or deferring a determination under subsection (c).".

SEC. 17. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

Title I of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 120. MARINE MAMMAL COOPERATIVE AGREEMENTS IN ALASKA.

"(a) IN GENERAL.—The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

"(b) GRANTS.—Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

"(1) collecting and analyzing data on marine mammal populations;

"(2) monitoring the harvest of marine mammals for subsistence use;

"(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

"(4) developing marine mammal co-management structures with Federal and State agencies.

"(c) EFFECT OF JURISDICTION.—Nothing in this section is intended or shall be construed—

"(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

"(2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purposes of carrying out this section—

"(1) $1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

"(2) $1,000,000 to the Secretary of Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 7 of the Act entitled 'An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes', approved October 9, 1981 (16 U.S.C. 1384).".

SEC. 18. BERING SEA MARINE ECOSYSTEM PROTECTION.

Section 110 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1380) is amended by striking subsection (c) and inserting in lieu thereof the following:

"(c)(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, Alaska Native organizations, and fishery and environmental groups, shall, not later than 180 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research rec-

ommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

"(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

"(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 103(f) and 204.".

SEC. 19. INTERJURISDICTIONAL FISHERIES ACT OF 1986.

Section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b)) is amended by striking "$2,500,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995" and inserting in lieu thereof "$65,000,000 for each of the fiscal years 1994 and 1995".

SEC. 20. COASTAL ECOSYSTEM HEALTH.

(a) REQUIREMENT TO CONVEY.—Not later than September 30, 1994, the Secretary of the Navy shall convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the northwest side of Pier R, and the fenceline between the buildings known as RTC–1 and 200. Such property shall include Pier R, the buildings known as RTC–1 and RTC–4, and all walkways and parking areas associated with such buildings and Pier R.

(b) SURVEY; EFFECT ON LIABILITY OF SECRETARY OF THE NAVY.—The acreage and legal description of the property to be conveyed pursuant to this section shall be determined by a survey approved by the Secretary of the Navy. Such conveyance shall not release the Secretary of the Navy from any liability arising prior to, during, or after such conveyance as a result of the ownership or occupation of the property by the United States Navy.

(c) USE BY NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The property conveyed pursuant to this section shall be used by the Secretary of Commerce in support of the operations of the National Oceanic and Atmospheric Administration.

(d) REVERSION RIGHTS.—Conveyance of the property pursuant to this section shall be subject to the condition that all right, title, and interest in and to the property so conveyed shall immediately be conveyed to the public entity vested with ownership of the remainder of the Charleston Naval Base, if and when—

(1) continued ownership and occupation of the property by the National Oceanic and Atmospheric Administration no longer is compatible with the comprehensive plan for reuse of the Charleston Naval Base developed by the community reuse committee and approved by the Secretary of the Navy; and

(2) such public entity provides for relocation of the programs and personnel of the National Oceanic and Atmospheric Administration occupying such property, at no further cost to the United States Government, to a comparable facility, including adjacent waterfront and pier, within the Charleston area.

EXON (AND OTHERS) AMENDMENT NO. 1551

Mr. JOHNSTON (for Mr. EXON for himself, Mr. DANFORTH, Mr. GRAHAM, Mr. INOUYE, Mr. MACK, Mrs. HUTCHISON, Mr. PACKWOOD, Mr. PRESSLER, Mr. COCHRAN, Mr. LOTT, Mr. GORTON, Mr. KERREY, Mr. DASCHLE, Mr. DECONCINI, Mr. SIMON, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, and Mr. D'AMATO) proposed an amendment to Amendment No. 1550 proposed by Mr. KERRY to the bill S. 1636, supra; as follows:

Strike all on page 13, line 15, through page 15, line 19, and insert the following:

SEC. 5. PERMITS.

(a) PROHIBITIONS.—Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended—

(1) in paragraph (2)(B), by striking "for any purpose in any way connected with the taking or importation of" and inserting in lieu thereof "to take or import"; and

(2) by amending paragraph (4) to read as follows:

"(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

"(A) that is taken in violation of this Act; or

"(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under section 104(c); and".

(b) PERMITS.—(1) Section 104(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(a)) is amended—

(A) by inserting ", harassment," immediately after "taking"; and

(B) by inserting "except for the incidental taking of marine mammals during the course of commercial fishing operations" immediately before the period at the end.

(2) Section 104(c)(1) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(1) is amended by striking "and after" in the first sentence.

(3) Paragraph (2) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

"(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

"(ii) is registered or holds a license issued under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and

"(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

"(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

"(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

"(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

"(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

"(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

"(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall—

"(i) for the purpose of public display, be limited to the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

"(ii) for the purpose of scientific research, be limited to the responsibility to meet the requirements of paragraph (3); and

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, be limited to the responsibility to meet the requirements of paragraph (4).

"(D) If the Secretary—

"(i) finds, in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

"(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

"(E) No marine mammal held pursuant to a permit issued under subparagraph (A) may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).".

(4) Paragraph (3) of section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended to read as follows:

"(3)(A) A permit may be issued, for scientific research purposes that are likely to result in the taking or harassment of a marine mammal, to an applicant who submits information with the permit application indicating that the taking or harassment is required to further a bona fide scientific purpose. The Secretary is authorized to issue permits under this paragraph prior to the end of the mandatory public review and comment period if delaying the issuance of such permit could result in harm to a species, stock, or individual marine mammal, or result in loss of unique research opportunities.

"(B) No permit issued for purposes of scientific research under subparagraph (A) shall authorize the lethal taking of a marine mammal unless the applicant submits docu-

mentation to the Secretary that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

"(C) Not later than 60 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994, the Secretary shall grant a general authorization and shall issue implementing regulations allowing bona fide scientific research that is not likely to result in the taking or harassment of a marine mammal. Such authorization shall apply to persons who submit, at least 60 days prior to commencement of the research, a letter of intent to the Secretary specifying—

"(i) the species or stock of marine mammal on which the research will be conducted;

"(ii) the geographic location of the research;

"(iii) the period of time over which the research will be conducted;

"(iv) the purpose of the research, including a description of how the definition of bona fide research as established by the Secretary under this Act would apply; and

"(v) the methods used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary may notify the applicant that the proposed research is likely to result in the taking or harassment of a marine mammal, and that the provisions of subparagraph (A) apply. If no such notification is received, the proposed research shall be covered under the general authorization.".

(5) Section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended by adding at the end the following new paragraphs:

"(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

"(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

"(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

"(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

"(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

"(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

"(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

"(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

"(B)(i) A person which has possession of a marine mammal pursuant to a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), that gives birth to progeny shall—

"(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

"(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

"(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

"(C) Any progeny of a marine mammal born in captivity before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

"(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

"(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2) and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information, which shall be provided by a person holding a marine mammal under this Act:

"(A) The name of the marine mammal or other identification.

"(B) The sex of the marine mammal.

"(C) The estimated or actual birth date of the marine mammal.

"(D) The date of acquisition or disposition of the marine mammal by the permit holder.

"(E) The source from whom the marine mammal was acquired, including the location of the take from the wild, if applicable.

"(F) If the marine mammal is transferred, the name of the recipient.

"(G) A notation if the animal was acquired as the result of a stranding.

"(H) The date of death of the marine mammal and the cause of death when determined.".

(c) EXISTING PERMITS.—Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act is hereby modified to be consistent with that section, as amended by this Act.

NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1994

WALLOP AMENDMENT NO. 1552

Mr. WALLOP proposed an amendment to the bill (S. 208) to reform the concessions policies of the National Park Service, and for other purposes; as follows:

On Page 32, on lines 14 through 21, strike paragraph 3 in its entirety and insert in lieu thereof the following:

"(3)(A) Except as provided in subparagraph (B), with respect to a concessions contract entered into on or after the date of enactment of this Act, the provisions of subsection (b) shall apply to any existing structure, fixture, or improvement as defined in paragraph (a)(1), except that the value of the possessory interest as of the termination date of the first contract expiring after the date of enactment of this Act shall be used as the basis for depreciation, in lieu of the actual original cost of such structure, fixture, or improvement.

"(B) If the Secretary determines during the competitive selection process that all proposals submitted either fail to meet the minimum requirements or are rejected (as provided in section 6), the Secretary may, solely with respect to a structure, fixture, or improvement covered under this paragraph, suspend the depreciation provisions of subsection (b)(1) for the duration of the contract: *Provided*, That the Secretary may suspend such depreciation provisions only if the Secretary determines that the establishment of other new minimum contract requirements is not likely to result in the submission of satisfactory proposals, and that the suspension of the depreciation provisions is likely to result in the submission of satisfactory proposals.

WALLOP AMENDMENT NO. 1553

Mr. WALLOP proposed an amendment to the bill S. 208, supra; as follows:

At the appropriate place insert the following new section:

SEC. . Beginning on June 1, 1997 and bi-annually thereafter the Inspector General of the Department of the Interior shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the appropriate Committees of the House of Representatives on the implementation of this Act and the effect of such implementation on facilities operated pursuant to concession contracts and on visitor services. Each report shall

(a) identify any concession contracts which have been renewed, renegotiated, terminated, or transferred during the year prior to the submission of the report and identify any significant changes in the terms of the new contract;

(b) state the amount of franchise fees the rates which would be charged for services, and the level other of services required to be provided by the concessioner in comparison to that required in the previous contract,

(c) assess the degree to which concession facilities are being maintained using the condition of such facilities on the date of enactment of this Act as a baseline;

(d) determine whether competition has been increased or decreased with respect to the awarding of each contract;

(e) set forth the amount of revenues received and financial obligations incurred or reduced by the Federal Government as a result of the comparison of the Act for the reporting period and in comparison with previous reporting periods and the baseline year of 1993, including the costs, if any, associated with the acquisition of possessory interests.

MCCAIN AMENDMENT NO. 1554

Mr. WALLOP (for Mr. MCCAIN) proposed an amendment to the bill S. 208, supra; as follows:

On page 34, lines 24 and 25, between "Federal State and Local regulatory agencies", and "If the Secretary's performance", insert the following, ", and shall seek and consider the applicable views of park visitors and concession customers."

MCCAIN AMENDMENT NO. 1555

Mr. WALLOP (for Mr. MCCAIN) proposed an amendment to the bill S. 208 to reform the concessions policies of the National Park Service, and for other purposes; as follows:

On page 21, line 25, after "to the public at a park", insert the following, "except that the Secretary shall take all reasonable and appropriate steps to consider competing alternatives for such contract.".

COHEN AMENDMENT NO. 1556

Mr. WALLOP (for Mr. COHEN) proposed an amendment to the bill S. 208 to reform the concessions policies of the National Park Service, and for other purposes; as follows:

On page 35, line 21, through page 36, line 5, strike section 14 in its entirety and insert in lieu thereof the following:

SEC. 14. RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of five calendar years after the close of the business year for each concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the contracts or contracts involved.

NOTICE OF JOINT HEARING

COMMITTEE ON INDIAN AFFAIRS AND COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. INOUYE. Mr. President, I would like to announce that the Senate Committee on Indian Affairs and the Senate Committee on Labor and Human Resources will be holding a joint hearing on Friday, March 25, 1994, beginning at 10 a.m., in 485 Russell Senate Office Building on the Headstart Programs serving native Americans.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND BUSINESS RIGHTS

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Antitrust, Monopolies, and Business Rights Subcommittee of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Monday, March 21, 1994, at 10:30 a.m. in St. Petersburg, FL, to hold a field hearing on "baseball and antitrust."

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

Mr. BUMPERS. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Tuesday, March 22; that following the Prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each, with the following Senators recognized to speak for the time limits specified and in the order listed, if present: Senator WOFFORD for up to 20 minutes, Senator BRADLEY for up to 15 minutes, and Senator HATCH for up to 15 minutes; that at 10 a.m., the Senate proceed to the consideration of Calendar No. 390, Senate Concurrent Resolution 63, the concurrent budget resolution, with the statutory time limit for consideration of the concurrent resolution reduced to 30 hours; that on Tuesday, March 22, the Senate stand in recess from 12:30 p.m., to 2:30 p.m., in order to accommodate the respective party conferences, with the time of the recess period for the conferences being charged against the statutory time limit for consideration of the concurrent budget resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9 A.M., TUESDAY, MARCH 22, 1994

Mr. BUMPERS. Mr. President, if there is no further business to come before the Senate today, and if no other Senator is seeking recognition, I now ask unanimous consent the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 1:53 p.m., recessed until Tuesday, March 22, 1994, at 9 a.m.